

EXHIBIT

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IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION
---000---

IN RE: NATIONAL
PRESCRIPTION OPIATE
LITIGATION

MDL No. 2804
Case No. 17-md-2804
Judge Dan Aaron Polster

This document relates to
Track Eight: Cobb
County, Georgia
Case No. 1:18-op-45817

COBB COUNTY,
Plaintiff,
vs.
PURDUE PHARMA, L.P.,
et al.,
Defendants.

IN RE: NATIONAL
PRESCRIPTION
OPIATE LITIGATION

MDL No. 2804
Case No. 17-md-2804
Judge Dan Aaron Polster

This document relates
to: Track Nine: Tarrant
County, Texas
Case No. 1:18-op-45274

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VIDEOTAPED DEPOSITION OF ANNA LEMBKE, M.D.

May 16, 2024

REPORTED BY:
EARLY K. LANGLEY RMR, RSA, B.A. (PBK)
CSR NO. 3537
JOB NO: MW 6693057

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<p style="text-align: right;">Page 6</p> <p>1 DEPOSITION OF ANNA LEMBKE, M.D.</p> <p>2</p> <p>3 BE IT REMEMBERED, that pursuant to Notice,</p> <p>4 and on May 16, 2024, commencing at the hour of</p> <p>5 8:08 a.m., in the offices of Lieff Cabraser</p> <p>6 Heimann & Bernstein, LLP, 275 Battery Street,</p> <p>7 Suite 2900, San Francisco, CA, before me, EARLY</p> <p>8 LANGLEY, a Certified Shorthand Reporter, State of</p> <p>9 California, personally appeared ANNA LEMBKE, M.D.,</p> <p>10 produced as a witness in said action, and being by</p> <p>11 me first duly sworn, was thereupon examined as a</p> <p>12 witness in said cause.</p> <p>13 ---oOo---</p> <p>14 APPEARANCES:</p> <p>15 For the Plaintiffs:</p> <p>16</p> <p>17 LIEFF CABRASER HEIMANN & BERNSTEIN, LLP</p> <p>18 BY: DON C. ARBITBLIT, ESQ.</p> <p>19 275 Battery Street, 29th Floor</p> <p>20 San Francisco, CA 94111</p> <p>21 (415) 956-1000</p> <p>22 Darbitblit@lchb.com</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 8</p> <p>1 For the Plaintiff Tarrant County:</p> <p>2</p> <p>3 THE LANIER LAW FIRM, PC</p> <p>4 BY: ALEX ABSTON, ESQ. (Via Zoom)</p> <p>5 BY: LEILA AYACHI, ESQ. (Via Zoom)</p> <p>6 BY: EVAN M. JANUSH, ESQ. (Via Zoom)</p> <p>7 10940 W. Sam Houston Pkwy N., Suite 100</p> <p>8 Houston, TX 77064</p> <p>9 (713) 659-5200</p> <p>10 Alex.abston@lanierlawfirm.com</p> <p>11 Leila.ayachi@lanierlawfirm.com</p> <p>12 Evan.janush@lanierlawfirm.com</p> <p>13</p> <p>14</p> <p>15 For the Defendant Publix Super Markets, Inc.:</p> <p>16</p> <p>17 BARNES & THORNBURG LLP</p> <p>18 BY: KARA KAPKE, ESQ.</p> <p>19 BY: FRANCIS X. MATTINGLY, ESQ.</p> <p>20 11 South Meridian Street</p> <p>21 Indianapolis, IN 46204</p> <p>22 (317) 236-1313</p> <p>23 Kara.kapke@btlaw.com</p> <p>24 Fmattingly@btlaw.com</p> <p>25</p>
<p style="text-align: right;">Page 7</p> <p>1 For the Plaintiffs:</p> <p>2</p> <p>3 LIEFF CABRASER HEIMANN & BERNSTEIN, LLP</p> <p>4 BY: MARK P. CHALOS, ESQ.</p> <p>5 222 2nd Avenue South, Suite 1640</p> <p>6 Nashville, TN 37201</p> <p>7 (615) 313-9000</p> <p>8 Mchalos@lchb.com</p> <p>9</p> <p>10 For the Plaintiff Cobb County:</p> <p>11</p> <p>12 SIMMONS HANLY CONROY, LLP</p> <p>13 BY: SARAH BURNS, ESQ. (Via Zoom)</p> <p>14 One Court Street</p> <p>15 Alton, IL 62002</p> <p>16 (618) 693-3104</p> <p>17 Sburns@simmonsfirm.com</p> <p>18</p> <p>19 SIMMONS HANLY CONROY, LLP</p> <p>20 BY: THOMAS SHERIDAN, III, ESQ. (Via Zoom)</p> <p>21 112 Madison Avenue, 7th Floor</p> <p>22 New York, NY 10016</p> <p>23 (212) 257-8482</p> <p>24 Tsheridan@simmonsfirm.com</p> <p>25</p>	<p style="text-align: right;">Page 9</p> <p>1 For the Defendant Albertsons, Inc.:</p> <p>2</p> <p>3 GREENBERG TRAURIG, LLP</p> <p>4 BY: GRETCHEN N. MILLER, ESQ.</p> <p>5 77 West Wacker Drive, Suite 3100</p> <p>6 Chicago, IL 60601</p> <p>7 (312) 456-8400</p> <p>8 Miller@gtlaw.com</p> <p>9</p> <p>10</p> <p>11 Also present:</p> <p>12</p> <p>13 KEIGO PAINTER, Videographer</p> <p>14 MICHAEL P. KOHLER</p> <p>15 BILL HAMMOND</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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<p style="text-align: right;">Page 10</p> <p>1 --oOo--</p> <p>2 PROCEEDINGS</p> <p>3 --oOo--</p> <p>4 THE VIDEOGRAPHER: Good morning. We are</p> <p>5 going on the record at 8:08 a.m. on May 16, 2024. 0</p> <p>6 Please note that the microphones are</p> <p>7 sensitive and may pick up whispering and private</p> <p>8 conversations. Please mute your phone at this</p> <p>9 time. Audio and video recording will continue to</p> <p>10 take place unless all parties agree to go off the</p> <p>11 record.</p> <p>12 This is Media Unit 1 of the video-recorded</p> <p>13 deposition of Dr. Anna Lembke taken by the counsel</p> <p>14 for defendants in the matter of National</p> <p>15 Prescription Opiate Litigation, Cobb County,</p> <p>16 v. Purdue Pharma, et al., filed in the United</p> <p>17 States District Court, Northern District of Ohio,</p> <p>18 Eastern Division, Case Number 1:18-op-45817.</p> <p>19 The location of the deposition is 275</p> <p>20 Battery Street, 28th Floor, San Francisco,</p> <p>21 California 94111.</p> <p>22 My name is Keigo Painter, representing</p> <p>23 Veritext. I'm the videographer. The court</p> <p>24 reporter is Early Langley from the firm Veritext.</p> <p>25 I am not related to any party in this action, nor</p>	<p style="text-align: right;">Page 12</p> <p>1 I know you've been deposed many times</p> <p>2 before, so I won't go over ground rules, other</p> <p>3 than, will you let me know if you don't understand</p> <p>4 one of my questions?</p> <p>5 A. Yes.</p> <p>6 Q. Thank you. Also let me know if you need a</p> <p>7 break at any point.</p> <p>8 Is this your first expert report in your</p> <p>9 years of work in the opioid litigation where you</p> <p>10 have offered opinions in a case brought against my</p> <p>11 client, Publix?</p> <p>12 A. Yes.</p> <p>13 Q. Have you ever shopped at a Publix or an</p> <p>14 Albertsons?</p> <p>15 A. I believe so, yes.</p> <p>16 Q. Publix or Albertsons or both?</p> <p>17 A. Albertsons.</p> <p>18 Q. I'll let Gretchen ask those questions, if</p> <p>19 she wants.</p> <p>20 Have you ever shopped at a Publix?</p> <p>21 A. Not that I remember.</p> <p>22 Q. So I assume, then, you've never obtained a</p> <p>23 prescription at a Publix?</p> <p>24 A. Correct.</p> <p>25 Q. Do you have any opinions about Publix's</p>
<p style="text-align: right;">Page 11</p> <p>1 am I financially interested in the outcome.</p> <p>2 If there are any objections to the</p> <p>3 proceeding, please state them at the time of your</p> <p>4 appearance.</p> <p>5 Counsel and all present, including</p> <p>6 remotely, will now state their appearances and</p> <p>7 affiliations for the record, beginning with the</p> <p>8 noticing attorney.</p> <p>9 MS. KAPKE: Kara Kapke and Frank Mattingly</p> <p>10 from Barnes & Thornburg for Publix Super Markets.</p> <p>11 MS. MILLER: Gretchen Miller from</p> <p>12 Greenberg Traurig on behalf of Defendant</p> <p>13 Albertsons.</p> <p>14 MR. CHALOS: Mark Chalos on behalf of the</p> <p>15 plaintiffs.</p> <p>16 MR. ARBITBLIT: Don Arbitblit for</p> <p>17 plaintiffs. And we are both with Lieff Cabraser.</p> <p>18 THE VIDEOGRAPHER: Would the court</p> <p>19 reporter please swear in the witness.</p> <p>20 ANNA LEMBKE, M.D.</p> <p>21 sworn as a witness,</p> <p>22 testified as follows:</p> <p>23 EXAMINATION BY MS. KAPKE:</p> <p>24 Q. Good morning, Dr. Lembke. My name is Kara</p> <p>25 Kapke, and I represent Publix Super Markets.</p>	<p style="text-align: right;">Page 13</p> <p>1 role as a distributor, or do all of your opinions</p> <p>2 specific to Publix relate to its role as a</p> <p>3 dispenser and a pharmacy?</p> <p>4 MR. ARBITBLIT: Object to form.</p> <p>5 You may answer.</p> <p>6 THE WITNESS: My report contains opinions</p> <p>7 related to distributors more broadly, and I am</p> <p>8 aware that Publix is a distributor, and I am aware</p> <p>9 of some of the specifics, but I am not offering a</p> <p>10 specific opinion on Publix's role as a</p> <p>11 distributor.</p> <p>12 BY MS. KAPKE:</p> <p>13 Q. Same question for Albertsons. Would we</p> <p>14 get the same answer?</p> <p>15 MR. ARBITBLIT: Object to form.</p> <p>16 THE WITNESS: I'm not aware that</p> <p>17 Albertsons is a distributor.</p> <p>18 BY MS. KAPKE:</p> <p>19 Q. Okay. Got it.</p> <p>20 Have you ever been to Georgia?</p> <p>21 A. I may have passed through Georgia.</p> <p>22 Q. How about Cobb County?</p> <p>23 A. I don't know. I don't think so.</p> <p>24 Q. Have you ever been licensed to practice</p> <p>25 medicine in Georgia?</p>

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<p style="text-align: right;">Page 14</p> <p>1 A. No.</p> <p>2 Q. Have you ever worked at a retail pharmacy</p> <p>3 chain?</p> <p>4 A. No.</p> <p>5 Q. Have you ever worked at a grocery store</p> <p>6 that contained a retail pharmacy?</p> <p>7 A. No.</p> <p>8 Q. Have you ever interviewed anyone that</p> <p>9 works at a Publix?</p> <p>10 A. No.</p> <p>11 Q. Have you ever interviewed anyone that</p> <p>12 filled a prescription at a Publix?</p> <p>13 A. No.</p> <p>14 Q. Did you do any research relating to Cobb</p> <p>15 County other than review what's in the materials</p> <p>16 cited in your report and supplemental materials</p> <p>17 cited that was recently provided to us?</p> <p>18 A. No.</p> <p>19 Q. Is there anything relevant to your</p> <p>20 opinions, besides your experience, of course, that</p> <p>21 you reviewed that is not listed in those two</p> <p>22 materials considered lists?</p> <p>23 A. No.</p> <p>24 (Whereupon, Lembke Exhibit 1 was marked</p> <p>25 for identification.)</p>	<p style="text-align: right;">Page 16</p> <p>1 Q. And the -- just describe what these are.</p> <p>2 A. This is page numbers for each report so</p> <p>3 that it's easier for me to get to the</p> <p>4 Publix-specific and Albertsons-specific sections.</p> <p>5 Q. Great. And we've highlighted on some</p> <p>6 various exhibits various Publix statements, and we</p> <p>7 tabbed some on the report as well, just to try to</p> <p>8 direct your attention as well.</p> <p>9 So as -- as I -- as you see down there,</p> <p>10 also here today is counsel for Albertsons,</p> <p>11 Gretchen Miller. After I finish my questions,</p> <p>12 Gretchen will have the opportunity to ask you</p> <p>13 additional questions.</p> <p>14 And your answers to either of our</p> <p>15 questions can be used in either Track 8 or</p> <p>16 Track 9. Is that your understanding?</p> <p>17 A. It is my understanding now.</p> <p>18 Q. And you've been previously asked a lot of</p> <p>19 questions in depositions and at trial in opioid</p> <p>20 litigation, and I'm going to try very hard not to</p> <p>21 repeat questions you've been previously asked or</p> <p>22 cover ground you've already covered, and Gretchen</p> <p>23 will do the same.</p> <p>24 But as a precursor to that, I need to</p> <p>25 confirm that you stand by that prior testimony.</p>
<p style="text-align: right;">Page 15</p> <p>1 (Whereupon, Lembke Exhibit 2 was marked</p> <p>2 for identification.)</p> <p>3 BY MS. KAPKE:</p> <p>4 Q. In front of you, what we have premarked as</p> <p>5 Exhibits 1 and 2, are your Cobb County report,</p> <p>6 your Track 8 report, and your Track 9 report as</p> <p>7 Exhibit 2.</p> <p>8 Does Exhibit 1, your Track 8 report,</p> <p>9 contain all of your opinions with respect to Cobb</p> <p>10 County and Publix?</p> <p>11 A. Yes, unless, of course, I'm asked to</p> <p>12 elaborate on something, in which I -- in which</p> <p>13 case, it may not be contained within here.</p> <p>14 Q. Same question for Tarrant County and</p> <p>15 Albertsons.</p> <p>16 A. Yes.</p> <p>17 Q. And I see in front of you, you've got some</p> <p>18 notes. Is that okay if we mark those as an</p> <p>19 exhibit?</p> <p>20 MR. ARBITBLIT: Yes.</p> <p>21 MS. KAPKE: Okay. We'll mark that as</p> <p>22 Lembke Exhibit 28.</p> <p>23 (Whereupon, Lembke Exhibit 28 was marked</p> <p>24 for identification.)</p> <p>25 BY MS. KAPKE:</p>	<p style="text-align: right;">Page 17</p> <p>1 Fair to say that you hold the same opinions today</p> <p>2 as you did in your prior testimony in opioid</p> <p>3 litigation?</p> <p>4 A. Not entirely fair. As I've gotten access</p> <p>5 to more material over time, some aspects of</p> <p>6 emphasis may have changed. Overall, my opinions</p> <p>7 are unchanged.</p> <p>8 Q. You previously testified that on a</p> <p>9 national level, in the first decade and a half of</p> <p>10 this century, most of the doctors who were writing</p> <p>11 opioid prescriptions thought that they were</p> <p>12 writing for a legitimate medical purpose.</p> <p>13 Does that include Cobb and Tarrant</p> <p>14 Counties?</p> <p>15 A. Yes.</p> <p>16 Q. You previously testified that you have</p> <p>17 never given a talk to pharmacists in which you</p> <p>18 were advising pharmacists specifically what steps</p> <p>19 they should follow before dispensing an opioid</p> <p>20 medication.</p> <p>21 Is that still true?</p> <p>22 A. I'm not sure. I think it's very likely</p> <p>23 that there have been pharmacists in the audience</p> <p>24 when I've given broader talks on these topics.</p> <p>25 I'm not recalling ever being invited specifically</p>

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<p style="text-align: right;">Page 18</p> <p>1 by a pharmacy organization, but even that is 2 possible. I'm not exactly sure. 3 Q. Okay. I do have some follow-up questions 4 about your prior testimony, and I will be very 5 targeted, to the extent possible. 6 In the New York Attorney General action, 7 you talked a lot about your methodology, and one 8 of the statements you made was that you conducted 9 an in-depth analysis of over 600 papers regarding 10 opioids in the medical literature. 11 And I imagine that number has gone up 12 since you testified in 2020. Correct? 13 A. Yes. 14 Q. I'm going to hand you several publications 15 that we have premarked as Lembke Exhibits 3 16 through 9. 17 (Whereupon, Lembke Exhibit 3 was marked 18 for identification.) 19 BY MS. KAPKE: 20 Q. So Exhibit 3 is the Lamkin and Elliott 21 article that you mention in Footnote 478 of your 22 report; is that right? 23 A. Yes, I recognize the article. 24 (Whereupon, Lembke Exhibit 4 was marked 25 for identification.)</p>	<p style="text-align: right;">Page 20</p> <p>1 referenced on page 17- -- 157, referenced on 2 page 157 of your report. 3 Would you consider Exhibit 7 part of the 4 medical literature you referred to in the New York 5 case? 6 A. I'd like a moment to look at this again. 7 Q. Sure. 8 A. And -- as well as, what page is it 9 footnoted on in the report? 10 Q. 157. 11 A. 157. 12 I would consider this article more of an 13 opinion piece. 14 (Whereupon, Lembke Exhibit 8 was marked 15 for identification.) 16 (Whereupon, Lembke Exhibit 9 was marked 17 for identification.) 18 BY MS. KAPKE: 19 Q. Okay. And then I'm going to hand you 20 Lembke Exhibit 8 and Lembke Exhibit 9. They're 21 two articles about pharmacists' workload from 22 Footnotes 768 and 769 of your report. 23 Would you consider this part of the 24 medical literature you referred to in the New York 25 case?</p>
<p style="text-align: right;">Page 19</p> <p>1 BY MS. KAPKE: 2 Q. And then Exhibit 4 is the CDC brochure 3 from Footnote 479 of your report. 4 (Whereupon, Lembke Exhibit 5 was marked 5 for identification.) 6 BY MS. KAPKE: 7 Q. Exhibit 5 is the Stanford-Lancet 8 Commission report mentioned throughout your 9 report. I'm sure you're very familiar with that. 10 A. Yes. 11 (Whereupon, Lembke Exhibit 6 was marked 12 for identification.) 13 BY MS. KAPKE: 14 Q. Exhibit 6 is the National Academy of 15 Sciences, Engineering, and Medicine report 16 mentioned specifically with respect to pharmacies 17 in Footnote 93. 18 I didn't print the entire thing, but I did 19 print the introductory material, Summary, Chapter 20 7 on opioids, and the References. 21 (Whereupon, Lembke Exhibit 7 was marked 22 for identification.) 23 BY MS. KAPKE: 24 Q. Exhibit 7 is a Pharmacy Times article 25 referenced on page 179 -- or excuse me --</p>	<p style="text-align: right;">Page 21</p> <p>1 A. Can you tell me what page? 2 Q. 768 and 769 are the footnotes. 3 A. Okay. Do you have the page numbers? 4 Q. I don't. 5 MR. CHALOS: It's at page 147. 6 THE WITNESS: Yeah. 7 Can you repeat your question. 8 MS. KAPKE: Sure. 9 BY MS. KAPKE: 10 Q. Would you consider those two exhibits part 11 of the medical literature, or are they more 12 opinion pieces as well? 13 MR. ARBITBLIT: Object to form. 14 THE WITNESS: I would consider the 15 "Pharmacy staffing levels can threaten patient 16 lives" as a direct communication to pharmacy 17 professionals that cites medical literature but in 18 and of itself doesn't represent medical 19 literature. 20 I would consider "Pharmacists' Workload 21 Contributes To Error" as an article that's 22 communicating with healthcare professionals, 23 describing a study in the medical literature. 24 BY MS. KAPKE: 25 Q. Okay. Besides Exhibits 3 through 9, do</p>

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<p style="text-align: right;">Page 22</p> <p>1 any of the papers or other materials from the 2 medical literature that you cite specifically 3 discuss the role of pharmacies with respect to 4 opioids? 5 A. Could you orient me on the numbers of the 6 exhibits? I don't think these exhibit numbers. 7 Q. Sure. So I tried to pull out all of the 8 exhibits that you cite in your report -- 9 A. Yeah. 10 Q. -- that are medical literature that relate 11 specifically to pharmacies and opioids, and that's 12 the exhibits in front of you. 13 Are there any -- is there anything else? 14 Is there any other medical literature that you 15 cite in your report that talks about the role of 16 pharmacies and opioids? 17 MR. ARBITBLIT: Object to the form of the 18 question. 19 And just to clarify, you're referring to 20 everything you've provided to the witness since 1 21 and 2, which were the reports, so -- just to 22 clarify? 23 MS. KAPKE: Correct. 24 THE WITNESS: Yeah, okay. So just for my 25 own clarification so I make sure I answer the</p>	<p style="text-align: right;">Page 24</p> <p>1 do that and find whatever other articles in the 2 medical literature there are that discuss the role 3 of pharmacies and opioids. 4 MR. ARBITBLIT: I'm not okay with taking a 5 break to do that, Counsel. It's a lengthy report, 6 and if she takes a break to go through the whole 7 report, that's going to extend our time beyond 8 what's contemplated. 9 If you want to have her take a few minutes 10 to look through it while we're on the record, 11 that's okay, but I'm not going to agree to take a 12 break for her to do that. 13 You're asking your questions, but you're 14 not entitled to say, "Take a break to look through 15 a 400-plus page report," and then come back when 16 you're ready. 17 BY MS. KAPKE: 18 Q. Are you familiar enough with your report 19 to answer my question without looking page by page 20 at it? 21 A. I have reviewed hundreds and hundreds of 22 articles. So to really be certain that I was 23 accurately answering your question, I would need 24 to take time. 25 Q. As you sit here today, can you name a</p>
<p style="text-align: right;">Page 23</p> <p>1 question you're asking, you are specifically 2 asking me whether these remaining exhibits, 3 Exhibit 3, 4, 5, and 6 discuss pharmacies? 4 BY MS. KAPKE: 5 Q. No. No. 6 I'm asking if there are any materials 7 besides Exhibits 3, 4, 5, 6, and 7 in the 8 medical -- sorry -- any materials besides 9 Exhibits 3 through 9 -- I'm not asking about 10 Exhibit 3 through 9. I'm asking about other 11 materials. 12 So besides what's in front of you, other 13 than your two reports, are there any articles in 14 the medical literature that specifically discuss 15 the role of pharmacies with respect to opioids? 16 MR. ARBITBLIT: That she's relied on? 17 BY MS. KAPKE: 18 Q. That you have relied upon. 19 A. My instinct would be to say yes, but I 20 would probably have to go through my report to 21 cite exactly which ones. 22 Q. Okay. I really -- I searched high and low 23 to find something besides those articles, so I'd 24 like you to do that. And I think -- if it's okay 25 with your counsel, let's take a break and have you</p>	<p style="text-align: right;">Page 25</p> <p>1 single article besides the ones that I put in 2 front of you in the medical literature that 3 discusses the role of opioids and pharmacies? 4 A. This is a very large report that I have 5 written over five years. I don't, unfortunately, 6 remember every article and exactly what it 7 discussed. So the answer is, I would need to 8 review the report. 9 Q. Would you have cited them in your report? 10 A. Yes. 11 MR. ARBITBLIT: Object to form. 12 BY MS. KAPKE: 13 Q. How long would it take you to do? 14 A. Well, I probably would have to go through 15 every single article and see whether or not it 16 specifically discussed pharmacies. There are 17 articles in here that may not in their heading or 18 in their summary have been about pharmacies but 19 may, indeed, in the body of the report have 20 discussed pharmacies. 21 Q. Did you make those in -- in the text 22 of your report, did you call any of those out? 23 MR. ARBITBLIT: Object to form. 24 THE WITNESS: I may have done. I may not 25 have done. I don't know.</p>

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<p style="text-align: right;">Page 26</p> <p>1 BY MS. KAPKE:</p> <p>2 Q. And that would be in the text of your</p> <p>3 report either way?</p> <p>4 MR. ARBITBLIT: Object to form.</p> <p>5 THE WITNESS: I read many articles. I --</p> <p>6 if you want to know which of those articles</p> <p>7 mentions pharmacies, I would need to go back and</p> <p>8 review all those articles.</p> <p>9 MR. ARBITBLIT: Do we know whose ringing</p> <p>10 is happening, what --</p> <p>11 THE VIDEOGRAPHER: That's when somebody</p> <p>12 gets added to the room.</p> <p>13 MR. ARBITBLIT: Okay.</p> <p>14 BY MS. KAPKE:</p> <p>15 Q. Here, you're relying on your experience,</p> <p>16 your professional judgment, your review of the</p> <p>17 medical literature, and your review of the</p> <p>18 documents provided to you; correct?</p> <p>19 A. Yes.</p> <p>20 Q. Have you reviewed or analyzed Publix's</p> <p>21 dispensing data production that contains patient</p> <p>22 information?</p> <p>23 A. What do you mean by "patient information"?</p> <p>24 Q. The actual dispensing data records that</p> <p>25 has the patient's name and the date of the fill</p>	<p style="text-align: right;">Page 28</p> <p>1 quantified the degree of responsibility that</p> <p>2 should be allocated to those various entities.</p> <p>3 Is that still true today? You have not</p> <p>4 quantified the degree of responsibility those</p> <p>5 entities should be allocated?</p> <p>6 A. That's still true today.</p> <p>7 Q. And I'm going to list off a few groups or</p> <p>8 entities and ask if you continue to believe that</p> <p>9 they contributed to the opioid epidemic.</p> <p>10 Doctors?</p> <p>11 A. Do you want me to respond "yes" or "no" to</p> <p>12 each of those?</p> <p>13 Q. Yes, please.</p> <p>14 A. Okay. Yes.</p> <p>15 Q. And not just pill mill doctors, but all</p> <p>16 doctors; correct?</p> <p>17 MR. ARBITBLIT: Object to form.</p> <p>18 THE WITNESS: The medical profession,</p> <p>19 including doctors, contributed to the opioid</p> <p>20 epidemic and, as I've stated before, primarily</p> <p>21 because they were miseducated and misinformed,</p> <p>22 although there is a subset of pill mill doctors.</p> <p>23 BY MS. KAPKE:</p> <p>24 Q. The FDA?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 27</p> <p>1 and the quantity of the fill, that contains that</p> <p>2 individualized, specific patient information.</p> <p>3 A. No.</p> <p>4 Q. On page 212 of your report, you reference</p> <p>5 an email where a Publix pharmacy supervisor</p> <p>6 identified 6 to 13 prescriptions that should not</p> <p>7 have been filled.</p> <p>8 Other than those 13 scripts, have you</p> <p>9 identified any specific prescriptions that in your</p> <p>10 opinion should not have been dispensed at Publix</p> <p>11 stores in Cobb County?</p> <p>12 MR. ARBITBLIT: Object to form.</p> <p>13 THE WITNESS: My analysis beyond those</p> <p>14 fraudulent prescriptions was in aggregate.</p> <p>15 BY MS. KAPKE:</p> <p>16 Q. And just to break that down, so because</p> <p>17 your analysis was in the aggregate, the answer to</p> <p>18 my question on whether you have identified any</p> <p>19 specific prescriptions that in your opinion should</p> <p>20 not have been dispensed at Publix stores in Cobb</p> <p>21 County would be no?</p> <p>22 A. That's fair.</p> <p>23 Q. In the New York litigation, you confirmed</p> <p>24 that you believe a number of entities contributed</p> <p>25 to the opioid crisis but that you had not</p>	<p style="text-align: right;">Page 29</p> <p>1 Q. State medical boards and the Federation of</p> <p>2 State Medical Boards?</p> <p>3 A. Yes.</p> <p>4 Q. And that would include the Georgia</p> <p>5 Composite Medical Board, which has the power to</p> <p>6 investigate and discipline doctors in Georgia?</p> <p>7 A. I didn't specifically look at the Georgia</p> <p>8 medical board except, I believe, beyond</p> <p>9 inspectors -- depositions of several inspectors.</p> <p>10 Q. What about formulary and reimbursement</p> <p>11 policies of insurance companies and other</p> <p>12 third-party payers?</p> <p>13 A. Yes.</p> <p>14 Q. DEA?</p> <p>15 A. Yes.</p> <p>16 Q. The three big wholesale distributors of</p> <p>17 McKesson, AmerisourceBergen, and Cardinal Health?</p> <p>18 A. Yes.</p> <p>19 Q. And, obviously, manufacturers?</p> <p>20 A. Yes.</p> <p>21 Q. Would you also say that healthcare systems</p> <p>22 or related entities employing or overseeing</p> <p>23 prescribers that collaborated with manufacturers</p> <p>24 to promote pain as the fifth vital sign or aligned</p> <p>25 physician incentive payments with patient</p>

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<p style="text-align: right;">Page 30</p> <p>1 satisfaction also bear some responsibility for the 2 opioid epidemic? 3 A. Oh, my. Can you restate that. I didn't 4 understand the question. 5 Q. Yeah. 6 Do you think that healthcare systems, 7 entities that employ doctors that collaborated 8 with manufacturers to promote pain as the fifth 9 vital sign or aligned physician incentive payments 10 with patient satisfaction also bear some 11 responsibility for the opioid epidemic? 12 MR. ARBITBLIT: Objection to form. 13 THE WITNESS: Yes. 14 BY MS. KAPKE: 15 Q. And do you still agree with your statement 16 in the Track 3 trial that, quote (as read): 17 "This was really something that we 18 all need to take responsibility for, from 19 physicians to pharmacies, to 20 manufacturers, to distributors. 21 "Everybody had a role to play here, 22 and I think it's essential that we look 23 back and honestly reflect on what our role 24 was and try to do better"? 25 A. Yes.</p>	<p style="text-align: right;">Page 32</p> <p>1 Q. So I understand you haven't reviewed 2 documents from other pharmacies in Cobb County 3 that were not defendants in this case that were 4 produced in discovery because they weren't 5 defendants, so they didn't produce documents. 6 If there were a pharmacy in Cobb County 7 that dispensed more pills than Publix or, 8 according to the ARCOS -- strike that. 9 If there were a pharmacy in Cobb County 10 that the ARCOS data showed received more pills 11 than Publix, would that pharmacy have a 12 responsibility for the opioid crisis? 13 MR. ARBITBLIT: Object to form. 14 THE WITNESS: Possibly. 15 But just because another pharmacy may have 16 received more pills than Publix would not 17 automatically discount or absolve Publix from its 18 contribution to the opioid crisis. 19 BY MS. KAPKE: 20 Q. Other than routine inspections conducted 21 of all registrants, are you aware of any DEA 22 investigation into Publix? 23 A. If I don't mention it in my report, then 24 I'm not aware. 25 Q. Okay. Do you want to take a second to</p>
<p style="text-align: right;">Page 31</p> <p>1 Q. In that sense, do you think that any 2 retail pharmacy that was dispensing opioids in the 3 early 2000s should take some responsibility for 4 the opioid crisis, at least where that pharmacy 5 was dispensing opioids? 6 MR. ARBITBLIT: Object to form. 7 THE WITNESS: I would want to analyze that 8 specific pharmacy before making that kind of 9 statement. 10 BY MS. KAPKE: 11 Q. What would go into that analysis -- 12 analysis? 13 A. Similar to what has gone into my analysis 14 of Publix: documents obtained in discovery, my 15 clinical experience, reviewing the medical 16 literature, my own research. 17 Q. Could you make that determination looking 18 solely at an aggregate number of pills dispensed 19 or received -- strike that. 20 Could you make that determination looking 21 solely at ARCOS data? 22 MR. ARBITBLIT: Object to form. 23 THE WITNESS: I think ARCOS data would -- 24 could be a strong indicator. 25 BY MS. KAPKE:</p>	<p style="text-align: right;">Page 33</p> <p>1 review? 2 A. I could, yes. I could do that. 3 Q. It's not in your report. I'll tell you 4 that. Would you agree with that? 5 MR. ARBITBLIT: The segment of her report 6 that's Publix-specific, as you would see on 7 Exhibit 28, is quite limited compared to the 8 overall report. 9 So if she could take a minute to look, I 10 would rather have her answer the question. 11 MS. KAPKE: I'm okay with that. 12 THE WITNESS: Okay. 13 Can you repeat your question, or if I 14 could see it again on realtime. 15 MR. ARBITBLIT: There's your question. 16 THE WITNESS: Okay. 17 BY MS. KAPKE: 18 Q. So I'll repeat it. You just took six 19 minutes to go through the report. 20 Are you aware of any DEA investigation 21 into Publix other than routine inspections 22 conducted of all registrants? 23 A. I'm not aware of any specific DEA 24 inspection of Publix. 25 But on 394 of my report, I do mention a</p>

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<p style="text-align: right;">Page 34</p> <p>1 2015 DEA intelligence report about the state of 2 Georgia, which does discuss behaviors like doctor 3 shopping and prescription fraud feeding opioid 4 dependency in the area. 5 Q. And is that Publix specific? 6 A. It doesn't appear to be, no. 7 Q. Are you aware of whether DEA, the 8 Department of Justice, the Board of Pharmacy, or 9 any other regulatory or law enforcement body has 10 ever cited or fined Publix? 11 A. Not that I am aware of. 12 Q. Are you aware of whether any regulatory 13 body has ever concluded that Publix ignored red 14 flags? 15 A. Not that I am aware of. 16 Q. Are you aware of whether any regulatory 17 body has ever concluded that Publix ignored surges 18 in the numbers of opioids distributed and 19 dispensed at certain pharmacies? 20 A. Not that I am aware of. 21 Q. Are you aware of whether any regulatory 22 body has ever expressed any concern about the 23 volume of opioids distributed or dispensed by 24 Publix? 25 A. Not that I am aware of.</p>	<p style="text-align: right;">Page 36</p> <p>1 opinion on Publix does not rely on his 2 conclusions. I have been able to form my own 3 conclusions through my own review. 4 BY MS. KAPKE: 5 Q. Have you ever analyzed a specific pharmacy 6 and found that it was not responsible in some part 7 for the opioid crisis? 8 A. My review is in aggregate, not based on 9 review of a single specific pharmacy. 10 Q. I'm -- what I am asking is, have you ever 11 looked at the evidence for a single pharmacy chain 12 and said, "You know what? This -- this pharmacy, 13 the evidence shows it's not responsible in some 14 part for the opioid crisis"? 15 A. So the form of your question, as a 16 two-part question, is one that I tried to answer 17 before, but I'm having difficulty answering it as 18 you've phrased it. 19 Let me see if I can -- 20 Q. Yeah. 21 A. -- take it apart. 22 Q. Yeah. 23 A. So I haven't analyzed any individual 24 pharmacy. My analysis is in aggregate. So I 25 haven't drawn conclusions based on any one</p>
<p style="text-align: right;">Page 35</p> <p>1 Q. Can you turn to page 96 of your report. 2 And can you just read paragraph F to 3 yourself. 4 A. Okay. 5 Q. Are you aware of any evidence that Publix 6 has paid millions in settlements? 7 A. No. 8 Q. Are you aware that James Rafalski was not 9 disclosed as an expert in either the Cobb County 10 or Tarrant County litigations? 11 A. No. 12 Q. Are you relying on his prior reports in 13 cases not involving Publix for any of your 14 opinions with respect to Publix? 15 MR. ARBITBLIT: Object to form. 16 THE WITNESS: I'm relying on my own review 17 of the evidence. 18 BY MS. KAPKE: 19 Q. So fair to say, then, you're not relying 20 on James Rafalski? 21 MR. ARBITBLIT: Object to form. 22 THE WITNESS: I'm not deferring to James 23 Rafalski. It was -- his conclusions were among 24 many documents that I have read that have been -- 25 that I've used to inform my opinion. But my</p>	<p style="text-align: right;">Page 37</p> <p>1 individual pharmacy. So you're asking me what 2 sounds like a hypothetical, because I haven't done 3 that. 4 Q. Okay. But you have done that as an expert 5 witness against CVS; correct? 6 A. I have studied CVS pharmacies in 7 aggregate. 8 Q. And opined that CVS pharmacies in the 9 aggregate are responsible in part for the opioid 10 crisis; right? 11 A. Yes. 12 Q. Okay. And you've done that with respect 13 to Walgreens and Kroger and Meijer and Giant Eagle 14 and Walmart; correct? 15 A. Yes. 16 Q. And Albertsons and Publix in Track 8 and 17 9; correct? 18 A. Yes. 19 Q. Have you done any analysis of a pharmacy 20 and concluded it was not responsible in some part 21 for the opioid crisis? 22 MR. ARBITBLIT: Object to form. 23 THE WITNESS: The pharmacies that I have 24 offered opinions on, I have concluded that they 25 have all contributed to the opioid crisis.</p>

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<p style="text-align: right;">Page 38</p> <p>1 BY MS. KAPKE:</p> <p>2 Q. Your reports talk about numerous other</p> <p>3 things that opioid manufactures, opioid</p> <p>4 distributors, and specific pharmacies did to</p> <p>5 increase the supply and sales of opioids.</p> <p>6 I'm going to get into the specific claims</p> <p>7 of what you talk about in detail with respect to</p> <p>8 Publix in a bit, but I want to ask some very</p> <p>9 targeted questions here.</p> <p>10 You reference Manufacturer Product</p> <p>11 Updates, or MPUs, on page 98 of your report.</p> <p>12 MR. ARBITBLIT: Is that a question?</p> <p>13 MS. KAPKE: Huh?</p> <p>14 MR. ARBITBLIT: Is that a question or --</p> <p>15 MS. KAPKE: No. I figured she would turn</p> <p>16 to page 98, and then I'm going to ask my question.</p> <p>17 MR. ARBITBLIT: All right.</p> <p>18 BY MS. KAPKE:</p> <p>19 Q. Do you have any evidence that Publix or</p> <p>20 Albertsons ever made an agreement with Purdue,</p> <p>21 Janssen, Abbott Labs, Mallinckrodt, or any other</p> <p>22 opioid manufacturer to receive payments in</p> <p>23 exchange for distribution --</p> <p>24 (Clarification requested by Reporter.)</p> <p>25 BY MS. KAPKE:</p>	<p style="text-align: right;">Page 40</p> <p>1 pamphlets, or physical advertising related to</p> <p>2 opioids for patients adjacent to or near the</p> <p>3 prescription counter?</p> <p>4 A. No.</p> <p>5 Q. Do you have any evidence Publix or</p> <p>6 Albertsons created patient-facing brochures in</p> <p>7 order to propagate myths about opioids?</p> <p>8 A. Publix and Albertsons both collaborated</p> <p>9 with the National Association of Chain Drug</p> <p>10 Stores, which did produce things like pamphlets,</p> <p>11 et cetera, to specifically target and promote</p> <p>12 opioids to patient consumers and pharmacists.</p> <p>13 Q. Other than through their collaboration</p> <p>14 with NACDS, do you have any evidence that Publix</p> <p>15 or Albertsons created patient-facing brochures in</p> <p>16 order to propagate myths about opioids?</p> <p>17 A. No.</p> <p>18 Q. Do you have any evidence Publix or</p> <p>19 Albertsons ever received money to include</p> <p>20 information in an internal pharmacy newsletter</p> <p>21 about opioids?</p> <p>22 A. No.</p> <p>23 Q. Do you have any evidence Publix or</p> <p>24 Albertsons called Purdue a reliable leader?</p> <p>25 A. I'm going to need to look at my report for</p>
<p style="text-align: right;">Page 39</p> <p>1 Q. Do you have any evidence that Publix or</p> <p>2 Albertsons ever made an agreement with Purdue,</p> <p>3 Janssen, Abbott Labs, Mallinckrodt, or any other</p> <p>4 opioid manufacturer to receive payments in</p> <p>5 exchange for distribution of Manufacturer Product</p> <p>6 Updates regarding opioids?</p> <p>7 A. Not specifically Manufacturer Product</p> <p>8 Updates, but yes to payments regarding coupons,</p> <p>9 refunds, and savings plans, which also function as</p> <p>10 a form of advertisement.</p> <p>11 Q. Right, which is why I'm asking very</p> <p>12 specific questions here.</p> <p>13 So do you have any evidence that Publix or</p> <p>14 Albertsons ever made an agreement with Janssen to</p> <p>15 receive compensation to enclose a direct-to-</p> <p>16 consumer promotion for the Duragesic patch in</p> <p>17 prescriptions filled for oral opioid products?</p> <p>18 A. No.</p> <p>19 Q. Do you have any evidence Publix or</p> <p>20 Albertsons ever received money to print</p> <p>21 information related to opioids on receipts for</p> <p>22 customer prescriptions?</p> <p>23 A. No.</p> <p>24 Q. Do you have any evidence Publix or</p> <p>25 Albertsons ever received money to place posters,</p>	<p style="text-align: right;">Page 41</p> <p>1 that one.</p> <p>2 And is your question specifically, quote,</p> <p>3 a reliable leader, unquote?</p> <p>4 Q. Yes, you can put "a reliable leader" in</p> <p>5 quotes.</p> <p>6 A. Okay. So some equivalent phrase is not --</p> <p>7 Q. Well, do you have evidence of an</p> <p>8 equivalent phrase?</p> <p>9 A. Yeah, I'm going to look at my report.</p> <p>10 Q. Sure.</p> <p>11 A. Okay. I'm going to need to go to CT9 to</p> <p>12 answer the Albertsons part of your question.</p> <p>13 BY MS. KAPKE:</p> <p>14 Q. Why don't -- why don't we just phrase it</p> <p>15 as --</p> <p>16 MS. KAPKE: Hey, guys. Sorry.</p> <p>17 BY MS. KAPKE:</p> <p>18 Q. Why don't we just phrase it as, do you</p> <p>19 have any evidence that Publix called Purdue a</p> <p>20 reliable leader or similar phrasing?</p> <p>21 A. I do not have specific evidence of Publix</p> <p>22 using that language, but I can infer from Publix's</p> <p>23 behavior that they looked to Purdue as a reliable</p> <p>24 leader.</p> <p>25 Q. How so?</p>

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<p style="text-align: right;">Page 42</p> <p>1 A. Training their pharmacists. That would be 2 a big one. 3 Q. Okay. So the continuing education. Are 4 you referring to anything other than the 5 continuing -- continuing pharmacist education? 6 A. Yes. 7 Q. What? 8 A. Relying on Purdue for rebates and coupons 9 for Purdue products, which is a form of 10 advertisement. 11 Q. Okay. Besides the coupons and the CEs, 12 anything that supports your inference there? 13 A. I think that would be primary. 14 Q. Okay. Do you have any evidence that 15 Purdue Pharma used or promoted a Publix or 16 Albertsons employee as a key opinion leader? 17 A. Can you repeat the question. 18 Q. Do you have any evidence that Purdue 19 Pharma used or promoted a Publix or Albertsons 20 employee as a key opinion leader? So -- 21 A. Yeah, I understand. 22 Q. Okay. 23 A. No. 24 Q. Okay. Do you have any evidence that 25 Purdue Pharma was ever a student of Publix or</p>	<p style="text-align: right;">Page 44</p> <p>1 Q. Okay. We'll come back to that. 2 Do you have evidence Publix or Albertsons 3 did anything to encourage healthcare systems to 4 align physician incentive payments with patient 5 satisfaction? 6 A. No. 7 Q. Do you have any evidence Publix or 8 Albertsons collaborated with or supported Scott 9 Fishman's book called Responsible Opioid 10 Prescribing? 11 A. No. 12 MS. KAPKE: Okay. Gretchen wanted a 13 break, so let's go off the record, if that's okay. 14 THE VIDEOGRAPHER: We are going off the 15 record. The time is 9:02. 0 16 (Recess taken.) 17 THE VIDEOGRAPHER: We're back on the 18 record. The time is 9:11. 19 BY MS. KAPKE: 20 Q. Do you understand you're still under oath, 21 Dr. Lembke? 22 A. Yes. 23 Q. Okay. Opinion 6, starting at page 96 of 24 your report, and Appendix III are the only times 25 you specifically introduce any evidence about</p>
<p style="text-align: right;">Page 43</p> <p>1 Albertsons at a continuing medical education 2 event? 3 A. No. 4 Q. Do you have any evidence that a Publix or 5 Albertsons pharmacist felt physically intimidated 6 by his pharmacy managers to dispense prescription 7 opioids? 8 A. What do you mean by "physically 9 intimidated"? 10 Q. I don't know, because that was a direct 11 quote from your report or testimony involving 12 another pharmacy. So -- 13 A. Got it. Okay. 14 I have -- 15 MR. ARBITBLIT: Object to form. 16 THE WITNESS: Yeah, I have evidence that 17 Publix and Albertsons pharmacists felt intimidated 18 to dispense opioids. 19 BY MS. KAPKE: 20 Q. Physically intimidated, in the sense that 21 you have referred to another pharmacy? 22 MR. ARBITBLIT: Object to form. 23 THE WITNESS: It would be great if you 24 could show me where and how I stated that before. 25 BY MS. KAPKE:</p>	<p style="text-align: right;">Page 45</p> <p>1 Publix in your report; correct? 2 A. No. 3 MR. ARBITBLIT: Object to form. 4 BY MS. KAPKE: 5 Q. Where else do you introduce evidence about 6 Publix? 7 A. What do you mean by "introduce evidence"? 8 Q. So I know you refer to Publix as a member 9 of the pharmaceutical opioid industry, and that's 10 throughout your report. But is all of the 11 evidence you cite to support Publix being a member 12 of the pharmaceutical opioid industry contained in 13 Opinion 6 or Appendix III? 14 MR. ARBITBLIT: Object to form. 15 THE WITNESS: I'll have to look at these 16 page numbers. 17 BY MS. KAPKE: 18 Q. And Opinion 6 is several hundred pages. 19 A. Do you know the page it ends on? 20 Q. I don't. It's clipped in Exhibit 1, if 21 you want to look at that. 22 A. I don't see a clip here. 23 MR. MATTINGLY: It is on the top. 24 THE WITNESS: It is on the top. 25 MR. MATTINGLY: But I believe it ends on</p>

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<p style="text-align: right;">Page 46</p> <p>1 214. 2 THE WITNESS: 214? Okay. 3 MR. MATTINGLY: 213. 4 THE WITNESS: 213? 5 I think that's fair to say. 6 BY MS. KAPKE: 7 Q. Okay. So I want to go through Opinion 6 8 in detail. It has subparts (a) through (q) in it. 9 So let's start with subpart (a) regarding 10 a decision in California. 11 MR. ARBITBLIT: Can I just ask, can I 12 remove these -- 13 MS. KAPKE: Yeah. 14 MR. ARBITBLIT: -- so they're not -- 15 MS. KAPKE: Yeah. 16 MR. ARBITBLIT: Don't want to distract her 17 during your inquiry. 18 BY MS. KAPKE: 19 Q. That decision in California does not 20 relate to Publix; correct? 21 A. I'm sorry. What page number are you 22 referring to? 23 Q. I think it's 96, and 97 then, subpart (a). 24 A. Are you referring to the findings of fact 25 and conclusions of law issued by Judge Breyer in</p>	<p style="text-align: right;">Page 48</p> <p>1 inadequate? 2 MR. ARBITBLIT: Object to form. 3 THE WITNESS: I'm aware of -- I'm aware of 4 Judge Wilson's opinion, and I disagree with it. 5 BY MS. KAPKE: 6 Q. We talked some about your opinions in 7 subpart (b) and subpart (b) -- or excuse me -- 8 subpart (c) and its discussion of coupons and 9 rebates, so I want to get into detail on that. 10 So if you go to page 102, you mention two 11 stock and save programs. 12 Do you have any evidence Publix stores in 13 Cobb County received rebates from Purdue for 14 either of the stock and save programs you mention? 15 A. These were national campaigns, so I can 16 infer that it's probable that Publix stores in 17 Cobb County were also participating in these 18 coupons and savings programs. 19 (Whereupon, Lembke Exhibit 10 was marked 20 for identification.) 21 BY MS. KAPKE: 22 Q. Okay. So I'm going to hand you 23 PPLPC004000282746 involving the Butrans stock and 24 save program that you cite. I did not print the 25 other tabs in the spreadsheet for the other</p>
<p style="text-align: right;">Page 47</p> <p>1 San Francisco? 2 Q. Yes. 3 A. Okay. Can you repeat your question. 4 Q. Yeah. 5 Publix was not a defendant in that case 6 and doesn't have stores in California; correct? 7 A. Correct. 8 Q. So subpart (a) doesn't have anything to do 9 with Publix; correct? 10 A. Not necessarily. 11 Q. Tell me how subpart (a) relates to Publix. 12 A. Judge Breyer's opinion in that case 13 informs Publix's -- informs my evaluation of 14 Publix's conduct, in part. For example, Judge 15 Breyer opined that pharmacies have a 16 responsibility to protect the public and protect 17 the public health. 18 Q. You do not reference the Orange County 19 case before Judge Wilson. Have you read Judge 20 Wilson's ruling in the Orange County case? 21 A. Yes. 22 Q. Has anyone conveyed to you the notion that 23 Judge Wilson said that the studies that you relied 24 upon for the conclusion that one in four patients 25 prescribed opioids would become addicted was</p>	<p style="text-align: right;">Page 49</p> <p>1 pharmacies, but Exhibit 10 is the printout of the 2 Publix tab from that exhibit. 3 And to make it a little easier, I printed 4 out and highlighted the four rows where the state 5 in Column O was GA. 6 MS. KAPKE: And we'll mark that 7 highlighted version as Lembke Exhibit 10A. 8 (Whereupon, Lembke Exhibit 10A was marked 9 for identification.) 10 BY MS. KAPKE: 11 Q. So Exhibit 10 and 10A show that Publix 12 received \$48 for rebates from Purdue in Georgia 13 for Butrans; is that correct? 14 A. Can you point me where the \$48 is that you 15 are referring to? 16 Q. I believe it's on the last page. 17 A. Okay. 18 I'm going to ask you to point to it with 19 your finger. 20 Q. Sure. So -- okay. We've got 12 -- sorry. 21 It's on page 2. We've got \$12, \$12, \$12 and \$12, 22 four rows of \$12 each for the Butrans rebates in 23 Georgia. 24 Do you have any reason to disagree with 25 that?</p>

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<p style="text-align: right;">Page 50</p> <p>1 A. No, I don't disagree with --</p> <p>2 Q. Okay.</p> <p>3 A. -- what's on this document.</p> <p>4 Q. And did you compare this spreadsheet and</p> <p>5 the specific stores on it to the list of Publix</p> <p>6 pharmacies in Cobb County?</p> <p>7 A. I'm not sure I understand your question.</p> <p>8 Q. Okay. Can I see that real quick.</p> <p>9 So here, we've got specific stores</p> <p>10 highlighted, the Georgia stores. There's four</p> <p>11 specific stores. There's one in Stockbridge,</p> <p>12 Martinez, Lawrenceville, and Atlanta.</p> <p>13 A. Uh-huh.</p> <p>14 Q. Do you know if any of these four stores</p> <p>15 are in Cobb County?</p> <p>16 A. I'm not sure.</p> <p>17 Q. Okay. You mention rebates -- we're done</p> <p>18 with that exhibit -- for Hysingla ER in Part E at</p> <p>19 the bottom of page 102.</p> <p>20 Irrespective of rebates, do you know how</p> <p>21 many total Hysingla ER prescriptions have ever</p> <p>22 been filled at Publix stores in Cobb County?</p> <p>23 A. No.</p> <p>24 Q. Does it matter to your opinion whether</p> <p>25 it's 2, 200, 2,000, 20,000?</p>	<p style="text-align: right;">Page 52</p> <p>1 Exhibit 11. And this is a printout of an Excel</p> <p>2 spreadsheet, and my paralegal put the tab names on</p> <p>3 a yellow Post-it note.</p> <p>4 And this is, for the record, PPL- --</p> <p>5 MR. ARBITBLIT: Before you proceed, can I</p> <p>6 have a copy of the exhibit, please.</p> <p>7 MS. KAPKE: Yeah. Frank has it.</p> <p>8 MR. ARBITBLIT: Just wait for the question</p> <p>9 until I have the exhibit, please.</p> <p>10 MS. KAPKE: Okay. Can I read the Bates</p> <p>11 number?</p> <p>12 MR. ARBITBLIT: Yeah, sure.</p> <p>13 MS. KAPKE: Okay. The Bates number, for</p> <p>14 the record, is PPLPC004000089725.</p> <p>15 BY MS. KAPKE:</p> <p>16 Q. And this spreadsheet contains information</p> <p>17 about PDT, or program to date, coupons redeemed</p> <p>18 for OxyContin; correct?</p> <p>19 A. Yes.</p> <p>20 Q. And in all of Georgia, 18 Publix</p> <p>21 pharmacies redeemed 43 coupons from Purdue and two</p> <p>22 Purdue savings cards; is that correct?</p> <p>23 A. Do you actually want me to add it up?</p> <p>24 Q. There is a Georgia-specific tab that's</p> <p>25 highlighted for Publix.</p>
<p style="text-align: right;">Page 51</p> <p>1 A. I would say it matters. But even if it's</p> <p>2 zero, it doesn't mean that Publix is not</p> <p>3 implicated in this program, importantly because</p> <p>4 people who are misusing prescription opioids will</p> <p>5 travel outside their county in order to obtain</p> <p>6 those opioids.</p> <p>7 Q. Do you -- would it matter to your opinion</p> <p>8 whether Publix stores across Georgia, or even</p> <p>9 across the company, had filled 200, 2,000, 20,000</p> <p>10 Hysingla prescriptions?</p> <p>11 MR. ARBITBLIT: Object to form.</p> <p>12 THE WITNESS: It would matter to me if any</p> <p>13 Publix store in any state relevant to this</p> <p>14 litigation had participated in these coupons and</p> <p>15 rebate programs.</p> <p>16 BY MS. KAPKE:</p> <p>17 Q. Going back up to paragraph B on 102, you</p> <p>18 note (as read):</p> <p>19 "Hundreds of OxyContin coupons and</p> <p>20 savings cards were redeemed at Publix and</p> <p>21 Albertsons pharmacies."</p> <p>22 (Whereupon, Lembke Exhibit 11 was marked</p> <p>23 for identification.)</p> <p>24 BY MS. KAPKE:</p> <p>25 Q. And, then, I'm going to hand you</p>	<p style="text-align: right;">Page 53</p> <p>1 And I've highlighted a few others on</p> <p>2 there, too, but...</p> <p>3 A. That's referring to Rainbow Drug Store?</p> <p>4 Q. Right. Go to the -- I think the first</p> <p>5 tab, we've highlighted Publix for you, Publix in</p> <p>6 Georgia.</p> <p>7 So my question was, in all of Georgia, 18</p> <p>8 Publix pharmacies redeemed 43 coupons from Purdue</p> <p>9 and two Purdue savings cards; is that correct?</p> <p>10 A. Yes. But it's also relevant that Publix</p> <p>11 pharmacies in Florida redeemed over a thousand of</p> <p>12 these coupons and savings cards.</p> <p>13 Q. The Georgia coupon redemptions of 43</p> <p>14 coupons is the same number of coupons redeemed at</p> <p>15 a single pharmacy in Georgia called Rainbow Drug</p> <p>16 Store; correct?</p> <p>17 A. That makes sense.</p> <p>18 Q. How many counties are in Georgia?</p> <p>19 A. I don't know.</p> <p>20 Q. How many total Publix pharmacies were</p> <p>21 operating as of 2006 when Purdue issued this</p> <p>22 report?</p> <p>23 A. I don't know.</p> <p>24 (Whereupon, Lembke Exhibit 12 was marked</p> <p>25 for identification.)</p>

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<p style="text-align: right;">Page 54</p> <p>1 BY MS. KAPKE:</p> <p>2 Q. I'm going to hand you Exhibit 12, which,</p> <p>3 for the record, is PPLPC004000089723.</p> <p>4 And this is an email from Steve "Seid" or</p> <p>5 "Seid" -- I'm not sure how you pronounce that --</p> <p>6 at Purdue mentioning how good the coupon</p> <p>7 redemption numbers looked for Purdue in Georgia.</p> <p>8 And you cited this email; correct?</p> <p>9 A. Give me a moment to read it, please.</p> <p>10 Q. Sure.</p> <p>11 A. Okay. I've read it.</p> <p>12 Q. You agree he notes Georgia had over a</p> <p>13 thousand coupon redemptions with a combination of</p> <p>14 chain and all others; correct?</p> <p>15 A. That's what it says here, yes.</p> <p>16 Q. But of those more than a thousand for all</p> <p>17 of Georgia, only 43 were redeemed at any Publix</p> <p>18 pharmacy in Georgia; correct?</p> <p>19 A. I'm not sure of the time frame that's</p> <p>20 being referred to in this email.</p> <p>21 Q. Okay. That's fair.</p> <p>22 Other than these 43 Publix -- or excuse</p> <p>23 me. Strike that.</p> <p>24 Other than these 43 Purdue coupons filled</p> <p>25 somewhere in the entire state of Georgia within</p>	<p style="text-align: right;">Page 56</p> <p>1 around these types of programs.</p> <p>2 BY MS. KAPKE:</p> <p>3 Q. Have you cited any other materials besides</p> <p>4 this spreadsheet relating to free samples?</p> <p>5 A. This is what I cite in relation</p> <p>6 specifically to the OxyContin program.</p> <p>7 Q. The next part of subpart (c) deals with</p> <p>8 adherence programs. Subsection romanette vi on</p> <p>9 page 103 states, quote (as read):</p> <p>10 "Opioid manufacturers, including</p> <p>11 Purdue and Actavis, contracted with a</p> <p>12 company called Adheris for prescription</p> <p>13 adherence programs to be offered to retail</p> <p>14 pharmacy chains, including Kroger, Publix,</p> <p>15 and Albertsons, for prescription opioids,</p> <p>16 including Butrans and Kadian."</p> <p>17 That's intentional wording there, correct,</p> <p>18 that manufacturers offered adherence programs to</p> <p>19 Publix? Correct?</p> <p>20 A. Yes.</p> <p>21 Q. Your report states that the Butrans</p> <p>22 program will be offered to the Adheris Pharmacy</p> <p>23 Network, which includes Publix.</p> <p>24 MS. KAPKE: And we'll mark PPLP003345164</p> <p>25 as Exhibit 13.</p>
<p style="text-align: right;">Page 55</p> <p>1 Publix's 156 pharmacies, do you have any knowledge</p> <p>2 or evidence that Publix's Cobb County stores had</p> <p>3 any involvement regarding, quote/unquote, free</p> <p>4 samples of opioids?</p> <p>5 A. My understanding is that these data are</p> <p>6 from a discrete period in time -- I think a single</p> <p>7 year -- and I can infer that it wasn't just those</p> <p>8 48 (sic) that -- that in the years that are not</p> <p>9 documented here, there were also redemptions of</p> <p>10 this coupon savings card.</p> <p>11 Q. The document itself says PTD, or program</p> <p>12 to date. Are you suggesting that that means that</p> <p>13 that is reflective of only a single year?</p> <p>14 A. I don't know. That would be my question.</p> <p>15 Q. Do you have any basis to believe that PTD</p> <p>16 does not suggest program to date, meaning all of</p> <p>17 the coupons up to the date of that spreadsheet?</p> <p>18 A. Well, I would like to know what the date</p> <p>19 is, because if it's programs to date up to 2016,</p> <p>20 then we have a whole bunch of years after that</p> <p>21 that would be relevant. That's my point.</p> <p>22 Q. For Purdue's OxyContin?</p> <p>23 MR. ARBITBLIT: Object to form.</p> <p>24 THE WITNESS: For the broader rebates</p> <p>25 programs redemption and collaboration with Purdue</p>	<p style="text-align: right;">Page 57</p> <p>1 (Whereupon, Lembke Exhibit 13 was marked</p> <p>2 for identification.)</p> <p>3 BY MS. KAPKE:</p> <p>4 Q. Do you agree that this letter does not</p> <p>5 mention Publix as a chain with approval?</p> <p>6 A. I agree that Publix is not mentioned here.</p> <p>7 But for the record, Albertsons is</p> <p>8 mentioned.</p> <p>9 And just again for the record, in</p> <p>10 reference to an earlier discussion, I think it's</p> <p>11 important to note that this adherence program also</p> <p>12 included letters and educational content mailed</p> <p>13 directly to patients, just vis-à-vis our earlier</p> <p>14 discussion of whether or not there were</p> <p>15 patient-facing pamphlets.</p> <p>16 Q. You reference programs relating to Actavis</p> <p>17 Kadian. Do you have any evidence that Publix ever</p> <p>18 participated in an adherence or marketing program</p> <p>19 with respect to Kadian?</p> <p>20 A. No.</p> <p>21 Q. Did you review any testimony from Publix</p> <p>22 witnesses about any participation in adherence</p> <p>23 programs relating to opioids?</p> <p>24 A. I did review testimony from Publix</p> <p>25 representatives regarding coupons, but not</p>

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<p style="text-align: right;">Page 58</p> <p>1 specifically mentioning the Adheris program.</p> <p>2 Q. How about any adherence programs?</p> <p>3 MR. ARBITBLIT: Object to form.</p> <p>4 THE WITNESS: I'm not recalling any</p> <p>5 testimony of a witness for Publix that</p> <p>6 specifically mentioned the adherence program, but</p> <p>7 I am recalling testimony regarding using coupons</p> <p>8 and counseling to advise patients and encourage</p> <p>9 certain types of prescriptions.</p> <p>10 BY MS. KAPKE:</p> <p>11 Q. What testimony was that; do you recall?</p> <p>12 A. It was one of the Publix pharmacists</p> <p>13 working in Cobb County. I'm not specifically</p> <p>14 recalling now which one. And it may have been</p> <p>15 more than one.</p> <p>16 Q. Okay. Let's move on to subparts (d) and</p> <p>17 (e) discussing continuing medical education.</p> <p>18 First, I want to ask -- you talk earlier</p> <p>19 in your report about drug company involvement in</p> <p>20 continuing medical education programs given to</p> <p>21 physicians.</p> <p>22 Do you have any evidence that Publix or</p> <p>23 Albertsons ever provided, sponsored, or had</p> <p>24 anything to do with continuing medical education</p> <p>25 programs that were given to physicians about</p>	<p style="text-align: right;">Page 60</p> <p>1 Q. Let me just ask it with respect to Publix,</p> <p>2 then.</p> <p>3 Other than through its membership with</p> <p>4 NACDS, do you have any evidence that Publix ever</p> <p>5 wrote, funded, or authored articles about opioids?</p> <p>6 A. I have to take a little time here. I am</p> <p>7 recalling something, and I don't know where it is,</p> <p>8 so I need a moment.</p> <p>9 I do think that the communications that</p> <p>10 Publix sent out to its pharmacists that were</p> <p>11 written by Purdue -- for example, on page 117 of</p> <p>12 my report, Purdue -- sorry -- Publix disseminated</p> <p>13 a Purdue press release, as said by Stephen Seid in</p> <p>14 his email chain (as read):</p> <p>15 "This is the announcement sent out by</p> <p>16 Publix. It is our press release."</p> <p>17 And I think indirectly, Publix was taking</p> <p>18 funding more broadly in their collaboration with</p> <p>19 Purdue, and this is evidence of the ways in which</p> <p>20 their financial incentives promoted Publix to</p> <p>21 disseminate misinformation that was created by</p> <p>22 Purdue.</p> <p>23 (Whereupon, Lembke Exhibit 18 was marked</p> <p>24 for identification.)</p> <p>25 BY MS. KAPKE:</p>
<p style="text-align: right;">Page 59</p> <p>1 opioids?</p> <p>2 A. It's not uncommon for pharmacists to</p> <p>3 attend lectures given for physicians or in their</p> <p>4 title being designed for physicians and not</p> <p>5 uncommon for physicians to potentially attend</p> <p>6 lectures that might emphasize a pharmacy audience.</p> <p>7 So I don't have specific evidence of</p> <p>8 Publix and Purdue together putting on continuing</p> <p>9 medical education specifically for physicians, but</p> <p>10 it's not impossible that physicians were there in</p> <p>11 the audience.</p> <p>12 Q. Do you have any evidence that Publix or</p> <p>13 Albertsons ever wrote, funded, or authored</p> <p>14 articles about opioids?</p> <p>15 A. Publix and Albertsons, in their</p> <p>16 collaboration with the National Association of</p> <p>17 Chain Drug Stores, put out publications</p> <p>18 that spread the misinformation that contributed to</p> <p>19 the opioid epidemic.</p> <p>20 Q. Other than through their membership with</p> <p>21 NACDS, do you have any evidence that Publix or</p> <p>22 Albertsons ever wrote, funded or authored articles</p> <p>23 about opioids?</p> <p>24 A. Give me one moment.</p> <p>25 I need to look at the Albertsons --</p>	<p style="text-align: right;">Page 61</p> <p>1 Q. Okay. I'll hand you what I premarked as</p> <p>2 Lembke Exhibit 18.</p> <p>3 Is this the press release you're talking</p> <p>4 about?</p> <p>5 A. Yes.</p> <p>6 Q. And that's PDD1701091369, for the record.</p> <p>7 Do you have any information to suggest</p> <p>8 that the pharmacists or pharmacy supervisors of</p> <p>9 Publix actually read this press release or, if</p> <p>10 they did, they read beyond the first paragraph?</p> <p>11 MR. ARBITBLIT: Object to form.</p> <p>12 THE WITNESS: I don't think it's relevant</p> <p>13 whether or not Publix pharmacists read this or how</p> <p>14 many. I think it's likely that some portion read</p> <p>15 this.</p> <p>16 I think what's relevant here is the very</p> <p>17 close collaboration between Purdue and Publix</p> <p>18 around miseducating their pharmacists.</p> <p>19 And per our earlier conversation, you did</p> <p>20 ask whether or not Publix had ever used a term</p> <p>21 like "Purdue is a leader."</p> <p>22 And right here in this announcement, it</p> <p>23 says -- (as read):</p> <p>24 "For more than 15 years, Purdue has</p> <p>25 been a leader in educating the healthcare</p>

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<p style="text-align: right;">Page 62</p> <p>1 community on responsible pain management</p> <p>2 and the appropriate use of pain</p> <p>3 medications,"</p> <p>4 -- which, for me, is another piece of</p> <p>5 evidence demonstrating the ways in which Publix</p> <p>6 looked to Purdue as a leader, as an educator, and</p> <p>7 used their material to educate their pharmacists</p> <p>8 as a both explicit and implicit quid pro quo for</p> <p>9 profit.</p> <p>10 BY MS. KAPKE:</p> <p>11 Q. In the email that Paul Hines sent, you</p> <p>12 would agree he just forwards the press release</p> <p>13 without comment; correct?</p> <p>14 MR. ARBITBLIT: Object to form.</p> <p>15 THE WITNESS: I don't see comment on this</p> <p>16 particular email. There might have been comments</p> <p>17 in other email, but I'm not seeing a comment here.</p> <p>18 BY MS. KAPKE:</p> <p>19 Q. Do you have any information to suggest</p> <p>20 that Publix ever sent any information from Purdue</p> <p>21 to its pharmacists besides this one press release?</p> <p>22 A. This press release is emblematic of</p> <p>23 Publix's reliance on Purdue to educate their</p> <p>24 pharmacists about the safety and efficacy of</p> <p>25 opioids. This is only one small example.</p>	<p style="text-align: right;">Page 64</p> <p>1 Q. Do you have any information to suggest</p> <p>2 that Purdue -- excuse me. Strike that.</p> <p>3 Do you have any information to suggest</p> <p>4 that Publix ever received money from anyone to</p> <p>5 distribute information about opioids to its</p> <p>6 pharmacists, whether by letter, email, or on an</p> <p>7 internal Publix website?</p> <p>8 MR. ARBITBLIT: Object to form.</p> <p>9 THE WITNESS: My understanding of the way</p> <p>10 that the rebate programs work is that the patients</p> <p>11 themselves pay less for the opioid and then the</p> <p>12 difference is given to the pharmacy that used that</p> <p>13 rebate plan.</p> <p>14 And my understanding is that Publix was</p> <p>15 involved and participated in those types of rebate</p> <p>16 plans and so, yes, received direct money from</p> <p>17 Purdue.</p> <p>18 And the reason that's relevant, let me</p> <p>19 emphasize again, is because those coupons,</p> <p>20 savings, and Adheris programs were a form of</p> <p>21 education to patient consumers.</p> <p>22 BY MS. KAPKE:</p> <p>23 Q. But as we saw earlier, the Purdue coupons</p> <p>24 were never redeemed in Cobb County; correct?</p> <p>25 A. It doesn't matter. They were redeemed by</p>
<p style="text-align: right;">Page 63</p> <p>1 But as I said before, the coupons,</p> <p>2 rebates, and savings programs were not just</p> <p>3 financial transactions, which, in and of</p> <p>4 themselves -- in and of themselves, I think,</p> <p>5 contributes to Publix's responsibility, but also,</p> <p>6 they were direct-to-patient educational programs.</p> <p>7 And as I described in my report, Publix</p> <p>8 relied on Purdue to educate their pharmacists</p> <p>9 about opioids, and in those continuing education</p> <p>10 settings, they used PowerPoint slides that were</p> <p>11 created by Purdue and Purdue key opinion leaders.</p> <p>12 They might have had handouts and other documents,</p> <p>13 as is very typical at a continuing education</p> <p>14 event.</p> <p>15 So I disagree with the statement that this</p> <p>16 is, you know, in isolation.</p> <p>17 Q. Okay. Besides the continuing education</p> <p>18 programs, which we'll talk about in just a second,</p> <p>19 do you have any information that Publix sent</p> <p>20 information directly from Purdue to its</p> <p>21 pharmacists besides this one press release?</p> <p>22 MR. ARBITBLIT: Object to form.</p> <p>23 THE WITNESS: I'm not now recalling</p> <p>24 another example, but there might be.</p> <p>25 BY MS. KAPKE:</p>	<p style="text-align: right;">Page 65</p> <p>1 Publix more broadly in the state of Georgia and</p> <p>2 the neighboring state of Florida. And patients</p> <p>3 misusing, addicted to, dependent on opioids are</p> <p>4 well known to travel far distances in order to get</p> <p>5 illegitimate prescriptions filled.</p> <p>6 Q. Okay. Do you have any evidence that</p> <p>7 Publix or Albertsons ever made payments to</p> <p>8 physicians relating to the marketing of opioids?</p> <p>9 And scratch that. I'll just ask with</p> <p>10 respect to Publix.</p> <p>11 Do you have any evidence that Publix ever</p> <p>12 made payments to physicians relating to the</p> <p>13 marketing of opioids?</p> <p>14 A. I have evidence that physicians were</p> <p>15 employed to teach pharmacists in Marietta,</p> <p>16 Georgia, and in Gainesville, Georgia. I believe</p> <p>17 those individuals were paid. I don't know for</p> <p>18 sure who paid them, whether it was Purdue or</p> <p>19 Publix or a little bit of each.</p> <p>20 Q. And are you talking about the continuing</p> <p>21 education programs in your -- that you reference</p> <p>22 in your report?</p> <p>23 A. Yes, on page 116. But -- maybe not</p> <p>24 exclusively there, but yes, that's what I am</p> <p>25 looking at now.</p>

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<p style="text-align: right;">Page 66</p> <p>1 Q. Other than CEs, continuing educations, do 2 you have any evidence that Publix ever made 3 payments to physicians relating to the marketing 4 of opioids? 5 A. No. 6 Q. Do you have any evidence that Publix ever 7 influenced medical school curriculum related to 8 opioids? 9 A. No. 10 Q. And the reason I'm asking, to use your own 11 words on page 104, your opinions vis-à-vis the 12 pharmacies and continuing education relate to 13 continuing education programs that were, 14 quote/unquote, targeting their own pharmacists; 15 correct? 16 MR. ARBITBLIT: Object to form. 17 THE WITNESS: I'm referring to continuing 18 educations targeting their own pharmacists and 19 pharmacists in general, because that kind of 20 misinformation led to a sea change in how the 21 medical community more broadly thought about 22 safety and efficacy of opioids. 23 BY MS. KAPKE: 24 Q. That's fair. 25 I'm just trying to make sure that I</p>	<p style="text-align: right;">Page 68</p> <p>1 A. My overall sense of Publix is that beyond 2 these early Purdue-sponsored designated continuing 3 education events for pharmacists, they were very 4 passive -- and I would argue even neglectful -- in 5 their education of their pharmacists around 6 opioids and controlled substances. 7 So, essentially, didn't train their 8 pharmacists as they should have done beyond 9 exposing them to the propaganda from Purdue, from 10 much of what was put out by the National 11 Association of Chain Drug Stores, with whom they 12 very closely collaborated, and further, from 13 absorbing what was the general misinformation in 14 the medical community at that time. 15 Q. I appreciate that. It would be helpful if 16 you would actually answer my question, though, 17 which is: 18 Other than the Endo dealing and these 19 three Publix and Purdue continuing educations, are 20 you aware of any continuing education that Publix 21 corporate allowed for manufacturers of opioids? 22 A. I want to be very clear when I answer your 23 question that I understand you to mean by it -- 24 you are talking about officially designated 25 continuing education that was labeled as such that</p>
<p style="text-align: right;">Page 67</p> <p>1 understand that you're not alleging that Publix 2 was trying to target physicians or prescribers 3 through continuing education. Is that fair? 4 A. That's fair. 5 Q. Okay. Okay. I see in your report -- and 6 the cited documents there is a reference to one 7 presentation in Georgia for Publix in 2001 and 8 then two presentations in August of 2003 for 9 Publix in Georgia. 10 Are you aware of any other continuing 11 education involving Publix and Purdue? 12 A. No. 13 Q. Are you aware of any continuing education 14 that Publix corporate allowed other manufacturers 15 of opioids besides Purdue to present to its 16 pharmacists? 17 A. I have evidence of Endo representatives 18 going into pharmacies to talk to Publix 19 pharmacists, and that is a form of, quote/unquote, 20 education. I would call it miseducation. 21 Q. Okay. Other than the Endo detailing -- or 22 miseducation, and the three Publix and Purdue CEs, 23 are you aware of any continuing education that 24 Publix corporate allowed from manufacturers of 25 opioids?</p>	<p style="text-align: right;">Page 69</p> <p>1 pharmacists need to attend to maintain their 2 license, as opposed to a broader term that might 3 be interpreted as education more broadly. 4 That's why I'm making that distinction. 5 Does that make sense? 6 Q. Okay. So the -- do you have any evidence 7 besides those three CE programs that are CE 8 programs that Purdue or any other opioid 9 manufacturer collaborated with Publix involving 10 opioids? 11 A. Not specific designated CE programs. But 12 pharmacists, like physicians, are educated in many 13 different ways, as I've testified before. 14 Q. Do you have any evidence that Publix 15 corporate requested payment for allowing Purdue to 16 make these three CE presentations to Cobb County 17 pharmacists? 18 A. I don't have evidence of such, but I've 19 seen those types of transactions before between 20 pharmacies and Purdue. But not specifically to 21 Publix. I have no evidence of that. 22 Q. Do you have any evidence that Publix 23 mandated or even strongly encouraged its Cobb 24 County pharmacists to attend these three CE 25 presentations?</p>

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<p style="text-align: right;">Page 70</p> <p>1 MR. ARBITBLIT: Object to form.</p> <p>2 THE WITNESS: Publix puts an overwhelming</p> <p>3 emphasis on the pharmacist's judgment and</p> <p>4 training, within my opinion, except for the</p> <p>5 misinformation that they supported, giving them</p> <p>6 very little support for how they're supposed to</p> <p>7 inform that judgment.</p> <p>8 So I do believe that Publix strongly</p> <p>9 encouraged its pharmacists to, in my opinion,</p> <p>10 almost be solely responsible for educating</p> <p>11 themselves, as opposed to using their resources</p> <p>12 and their leverage and their policies to educate</p> <p>13 pharmacists.</p> <p>14 BY MS. KAPKE:</p> <p>15 Q. So the answer to my question would be, you</p> <p>16 don't have any evidence that Publix encouraged its</p> <p>17 Cobb County pharmacists to specifically attend the</p> <p>18 three Purdue Pharma CE presentations?</p> <p>19 MR. ARBITBLIT: Object to form.</p> <p>20 THE WITNESS: I don't have evidence</p> <p>21 that -- well, give me a moment.</p> <p>22 I mean, Richard Gourash, who was a Publix</p> <p>23 corporate person, is the one who arranged with</p> <p>24 Purdue for these Purdue-sponsored, Purdue-led CE</p> <p>25 events to happen. That's on page 116 of my</p>	<p style="text-align: right;">Page 72</p> <p>1 these three Purdue CE education programs?</p> <p>2 MR. ARBITBLIT: Object to form.</p> <p>3 THE WITNESS: The fact that a Publix</p> <p>4 representative was seeking out Purdue and working</p> <p>5 together with Purdue to make these CEs happen in</p> <p>6 Georgia tells me that Publix corporate was</p> <p>7 encouraging and in support of their pharmacists</p> <p>8 attending those meetings.</p> <p>9 I don't feel like I need to have specific</p> <p>10 evidence of a communication to Purdue</p> <p>11 pharmacists -- sorry -- to Publix pharmacists</p> <p>12 saying, "Go to this CE event."</p> <p>13 I have plenty of evidence showing that</p> <p>14 Publix corporate expected its pharmacists to</p> <p>15 attend continuing education and to be up to date</p> <p>16 and to be almost solely responsible for managing</p> <p>17 the dispensation of controlled substances.</p> <p>18 (Whereupon, Lembke Exhibit 16 was marked</p> <p>19 for identification.)</p> <p>20 BY MS. KAPKE:</p> <p>21 Q. I want to introduce as -- what I have</p> <p>22 marked as Exhibit 16, the subsequent client report</p> <p>23 from Purdue for that CE. It's Lembke Exhibit 16,</p> <p>24 and it's PKY181887328.</p> <p>25 Here, it says that after the Purdue</p>
<p style="text-align: right;">Page 71</p> <p>1 report.</p> <p>2 A. And --</p> <p>3 MR. ARBITBLIT: Are you finished with your</p> <p>4 answer?</p> <p>5 THE WITNESS: Give me just one more</p> <p>6 moment.</p> <p>7 The fact that Paul Hines, again, was</p> <p>8 forwarding Publix -- I'm sorry -- forwarding</p> <p>9 Purdue material was indicative of messaging that</p> <p>10 would tell Publix pharmacists to look to Purdue as</p> <p>11 a leader, in quote (as read):</p> <p>12 "educating the healthcare community</p> <p>13 on responsible pain management and the</p> <p>14 appropriate use of pain medications,"</p> <p>15 unquote.</p> <p>16 Again, in 2003, Publix representative</p> <p>17 Richard Gourash met with Purdue corporate to</p> <p>18 discuss collaborating on seven to eight programs</p> <p>19 similar to those conducted in 2001.</p> <p>20 BY MS. KAPKE:</p> <p>21 Q. Dr. Lembke, my --</p> <p>22 A. Yeah.</p> <p>23 Q. -- my question was very specific.</p> <p>24 Do you have evidence that Publix</p> <p>25 specifically encouraged its pharmacists to attend</p>	<p style="text-align: right;">Page 73</p> <p>1 presentation, representatives from the Georgia</p> <p>2 Drugs and Narcotics Agency answered questions.</p> <p>3 In your opinion, should Publix not have</p> <p>4 allowed its pharmacists to listen to questions</p> <p>5 from GDNA agents?</p> <p>6 MR. ARBITBLIT: Object to form.</p> <p>7 THE WITNESS: I'm sorry. I think you</p> <p>8 misstated your question. I think you meant to</p> <p>9 say --</p> <p>10 MS. KAPKE: You're right. I did.</p> <p>11 BY MS. KAPKE:</p> <p>12 Q. In your opinion, should Purdue -- no.</p> <p>13 So should Publix not have allowed its</p> <p>14 pharmacists to listen to questions from GDNA</p> <p>15 agents?</p> <p>16 MR. ARBITBLIT: Object to form.</p> <p>17 THE WITNESS: I don't think that the</p> <p>18 questions were from GDNA agents. The questions</p> <p>19 were from the audience to the GDNA agents.</p> <p>20 BY MS. KAPKE:</p> <p>21 Q. Okay. So should Publix -- I see what</p> <p>22 you're saying.</p> <p>23 Should Publix not have allowed its</p> <p>24 pharmacists to listen to the Q and A involving</p> <p>25 GDNA agents?</p>

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<p style="text-align: right;">Page 74</p> <p>1 MR. ARBITBLIT: Object to form.</p> <p>2 THE WITNESS: It would really depend on</p> <p>3 what those questions and, specifically, what the</p> <p>4 answers were.</p> <p>5 BY MS. KAPKE:</p> <p>6 Q. Were the GDNA agents in attendance duped</p> <p>7 by Purdue?</p> <p>8 A. It wouldn't surprise me if they were. I</p> <p>9 don't know what they said at that event, so it's</p> <p>10 hard for me to judge.</p> <p>11 Q. Do you believe that GDNA collaborated with</p> <p>12 Purdue in promoting misleading messages?</p> <p>13 MR. ARBITBLIT: Object to form.</p> <p>14 THE WITNESS: I haven't studied that. I</p> <p>15 don't have documents. I'm happy to look at</p> <p>16 documents if you would like me to evaluate that.</p> <p>17 BY MS. KAPKE:</p> <p>18 Q. Is the fact that the GDNA co-presented at</p> <p>19 this CE evidence suggesting that GDNA collaborated</p> <p>20 with Purdue in promoting misleading evidence --</p> <p>21 misleading messages?</p> <p>22 A. Not in and of itself.</p> <p>23 As you know from my report, I specifically</p> <p>24 evaluated the material that was presented to the</p> <p>25 pharmacists at the CE event, and I iterate in</p>	<p style="text-align: right;">Page 76</p> <p>1 MR. ARBITBLIT: Object to form.</p> <p>2 THE WITNESS: There is plenty of evidence</p> <p>3 showing that when members of the opioid</p> <p>4 pharmaceutical industry, including opioid</p> <p>5 manufacturers and especially Purdue, are</p> <p>6 responsible for educating healthcare</p> <p>7 professionals, that that -- that education is</p> <p>8 biased and typically leads to more reliance or use</p> <p>9 of their specific product.</p> <p>10 The huge increase in opioid prescribing</p> <p>11 and dispensing began in the late 1990s and was</p> <p>12 especially, say, explosive in that first decade.</p> <p>13 Whether or not in 2001, you know, Publix</p> <p>14 had enough information to really know that that</p> <p>15 was contributing to the public harm, I would have</p> <p>16 to probably see what I could -- you know, I'd have</p> <p>17 to re-review some of that.</p> <p>18 I know that by 2003, there was the</p> <p>19 Government Accountability report specifically</p> <p>20 addressing the prescription opioid epidemic.</p> <p>21 By 2007, there was the judgment against</p> <p>22 Purdue.</p> <p>23 By 2011, there was the CDC announcing a</p> <p>24 prescription opioid epidemic.</p> <p>25 So...</p>
<p style="text-align: right;">Page 75</p> <p>1 great detail the ways in which it contained</p> <p>2 misleading messages about the safety and efficacy</p> <p>3 of opioids.</p> <p>4 So my claim here is not just the simple</p> <p>5 fact that they had the event and that Georgia</p> <p>6 pharmacists were present. It's also specifically</p> <p>7 to the content of what was communicated at the</p> <p>8 event. I would need to know the content of the</p> <p>9 Georgia Drugs and Narcotics Agency Q and A in</p> <p>10 order to speak to whether or not they contributed</p> <p>11 to misinformation.</p> <p>12 Q. Do you have any evidence that back in the</p> <p>13 early 2000s, when these CEs occurred, that Publix</p> <p>14 corporate had any knowledge that the Purdue CEs</p> <p>15 would be misleading?</p> <p>16 MR. ARBITBLIT: Object to form.</p> <p>17 THE WITNESS: I think the fact that Purdue</p> <p>18 left it to -- sorry.</p> <p>19 I think the fact that public -- Publix</p> <p>20 corporate left to it Purdue to educate their</p> <p>21 pharmacists was inherently wrong.</p> <p>22 BY MS. KAPKE:</p> <p>23 Q. Is there specific evidence that you can</p> <p>24 say Publix corporate knew that Purdue was acting</p> <p>25 nefariously?</p>	<p style="text-align: right;">Page 77</p> <p>1 BY MS. KAPKE:</p> <p>2 Q. Okay. I'm going to ask a very specific</p> <p>3 question.</p> <p>4 Do you believe that when Publix corporate</p> <p>5 agreed to allow the 2001 CE presentation, Publix</p> <p>6 corporate had any idea that the CE would contain</p> <p>7 misleading messages?</p> <p>8 MR. ARBITBLIT: Object to form.</p> <p>9 THE WITNESS: Publix corporate in 2001</p> <p>10 should have known that a CE that was sponsored by</p> <p>11 and led by Purdue Pharma would be biased.</p> <p>12 BY MS. KAPKE:</p> <p>13 Q. And in your opinion, would that be true</p> <p>14 for any manufacturer of any drug?</p> <p>15 MR. ARBITBLIT: Object to form.</p> <p>16 THE WITNESS: Yes.</p> <p>17 BY MS. KAPKE:</p> <p>18 Q. You reference two CE presentations in</p> <p>19 August 2020- -- my notes say "August 2023," and I</p> <p>20 know that that's wrong. It's 2020- -- 2003.</p> <p>21 So you reference two CE presentations at</p> <p>22 the Publix regional office in Marietta, Georgia,</p> <p>23 in August 2003.</p> <p>24 Have you seen a client report for these</p> <p>25 CEs or just the spreadsheet and planning email?</p>

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<p style="text-align: right;">Page 78</p> <p>1 A. Just what I have cited in the report. 2 (Whereupon, Lembke Exhibit 17 was marked 3 for identification.) 4 BY MS. KAPKE: 5 Q. Exhibit 17 is the deck you cited in your 6 footnote. And for the record, that's 7 PPLPC31000137304. 8 I just have a couple of very quick 9 questions about the deck. 10 See how the front page on the deck 11 says "Name"? 12 A. Yes, I see that. 13 Q. That would indicate it would be filled in 14 later by the individual presenter; correct? 15 A. I think we can assume that, yes. 16 Q. So this is a generic slide deck that would 17 have been adapted locally; correct? 18 A. Adapted or given in its entirety. 19 Q. Sure. 20 Have you seen the specific deck for the 21 presentations to Publix? 22 A. Yes. Do I -- is this the same as what I 23 cite here in the report? 24 Q. Yes. 25 A. Okay. Then I've seen it. I describe it</p>	<p style="text-align: right;">Page 80</p> <p>1 Q. Okay. 2 A. But I also have enough experience to know 3 that paid consultants who give these canned slide 4 decks are giving them exactly as is. 5 Q. So they would have included that slide? 6 A. They would have included the slide, and 7 there would not have been much variation. They 8 would have presented the material as Purdue 9 created it for them. 10 Q. I'm going to move on to subpart (f) of 11 your Opinion 6. 12 A. Do you know what page that is? 13 Q. I'm pulling it up. 14 125. 15 Okay. And I want to ask specifically an 16 unrelated question. 17 Is Publix one of the major chain 18 pharmacies? 19 MR. ARBITBLIT: Object to form. 20 THE WITNESS: My understanding is that 21 Publix is one of the largest privately held 22 companies and has a dominant presence in Georgia 23 and Florida. 24 So I guess, to answer your question more 25 specifically, my understanding is that it is a</p>
<p style="text-align: right;">Page 79</p> <p>1 in detail. 2 Q. No, but I mean, have you seen the specific 3 one, where there's a name filled in? 4 A. Ah, I see. 5 I don't recall one way or another. 6 Q. Okay. Do you know who made the 7 presentation? 8 A. My understanding is that Purdue consultant 9 or paid employee -- I'm not sure which -- Mary 10 Beth Kowalski, provided this CE. 11 Q. Slide 2 of the deck states (as read): 12 "Purdue provides the contents of this 13 program for informational purposes and for 14 your general interest only. By using the 15 program, you hereby agree not to rely on 16 any of the information contained therein." 17 Did I read that correctly? 18 MR. ARBITBLIT: Object to form. 19 THE WITNESS: Well, that's what it says 20 here, yeah. 21 BY MS. KAPKE: 22 Q. Do you have any reason to believe that the 23 presenter of the CEs given to Publix did not 24 include Slide 2 in his or her presentation? 25 A. No.</p>	<p style="text-align: right;">Page 81</p> <p>1 major chain pharmacy in a specific region. 2 BY MS. KAPKE: 3 Q. And the reason I'm -- I use that specific 4 term is, on page 155, romanette xiv, you say (as 5 read): 6 "This statement, in a document that 7 included input from all of the major chain 8 pharmacies..." 9 Are you including Publix in that? 10 MR. ARBITBLIT: I'm not seeing the 11 romanette xiv on page 155. So either the page is 12 inaccurate or the romanette is -- 13 MS. KAPKE: Oh, it's the romanette. It's 14 xix. I can't -- I cannot do romanettes. 15 Apologies for that. 16 MR. ARBITBLIT: That's okay. 17 BY MS. KAPKE: 18 Q. I'm basically trying to confirm that you 19 are not including Publix in that statement. 20 MR. ARBITBLIT: Object to form. 21 BY MS. KAPKE: 22 Q. And if you want, I can show you the 23 document. 24 A. I'm sorry. Your question is, was Publix 25 present at this convened meeting of the DEA</p>

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<p style="text-align: right;">Page 82</p> <p>1 compliance working group, or is it some other 2 question? 3 Q. Yeah, that's my question. 4 A. As far as I know, Publix was not present 5 for that convened meeting. But Publix was a 6 member -- is a member of the National Association 7 of Chain Drug Stores. 8 Q. Okay. Can you confirm whether Albertsons 9 was at that meeting? 10 A. To my knowledge, Albertsons was not at 11 that meeting. 12 Q. Okay. Do you have any evidence that 13 Publix or Albertsons ever provided, sponsored, or 14 had anything to do with Partners Against Pain? 15 A. No. 16 Q. Do you have any evidence that Publix or 17 Albertsons ever provided, sponsored, or had 18 anything to do with the American Pain Foundation? 19 A. Indirectly, both Publix and Albertsons had 20 a close association with Purdue and also with the 21 National Association of Chain Drug Stores, two 22 organizations that relied upon and cited 23 information produced by the American Pain 24 Society -- or the American Pain Foundation. 25 Sorry.</p>	<p style="text-align: right;">Page 84</p> <p>1 participation and, quote/unquote, very close 2 collaboration with NACDS? 3 A. Publix was a member of NACDS. I can infer 4 that Publix relied on NACDS to disseminate 5 information about controlled substances and 6 opioids to its pharmacists. 7 Publix created a computer-based education 8 in 2019, 2020 time frame, which was the first time 9 that they actually proactively sought to educate 10 their pharmacists on red flags, and that 11 educational module is very clearly informed by 12 NACDS, including little flags on each question 13 that say "NACDS." 14 Q. Other than the fact that Publix was a 15 member of NACDS and that NACDS did so, do you have 16 any evidence that Publix ever lobbied for or 17 against the rescheduling of hydrocodone? 18 A. No. 19 Q. Other than the fact that Publix was a 20 member of NACDS, do you have any evidence that it 21 collaborated with pro-opioid industry advocacy and 22 lobbying organizations? 23 A. It collaborated with Purdue. It 24 collaborated with Endo. It collaborated, as I 25 said, with NACDS. Those are the main ones.</p>
<p style="text-align: right;">Page 83</p> <p>1 Q. Do you have evidence that Publix or 2 Albertsons ever had any influence over guidelines 3 from the Federation of State Medical Boards? 4 A. No. 5 Q. Other than being a member of NACDS -- 6 Is it okay if I refer to the National 7 Chain -- National Association of Chain Drug Stores 8 as NACDS? 9 A. That's fine, yes. 10 Q. Okay. Other than being a member of NACDS, 11 do you have any evidence that Publix or Albertsons 12 ever provided, sponsored, or had anything to do 13 with funding of the Pain Care Forum? 14 A. I know that Albertsons closely 15 collaborated with NACDS around lobbying efforts, 16 so I would really need to look at the CT9 report 17 to refresh my memory on whether or not that have 18 might have included collaborations with other 19 entities. 20 Q. What about with Publix specifically? 21 Other -- 22 A. No. 23 Q. Okay. You said earlier that Publix... ah, 24 "very closely collaborated" with NACDS. 25 What evidence do you have about Publix's</p>	<p style="text-align: right;">Page 85</p> <p>1 Q. Okay. Let's talk about Endo. 2 Your report talks about (as read): 3 "Endo's Percocet call notes from 4 2013." 5 I think that's a typo. You meant 2003; 6 correct? 7 A. That is correct. 8 Where is my cheat sheet? 9 Q. Okay. The Endo document you cite, 10 ENDO-OPIOID_MDL-07391949, contains 364,253 rows of 11 data, and it would be more than 6,000 pages if 12 printed, so we prepared a summary of the lines 13 referencing Publix stores in Cobb County, Georgia. 14 (Whereupon, Lembke Exhibit 19 was marked 15 for identification.) 16 BY MS. KAPKE: 17 Q. We've marked that summary as Lembke 18 Exhibit 19. 19 And I will represent that for the rows we 20 omitted of the Cobb County Publix stores, the 21 columns we omitted in the summary, other than the 22 header, are blank. 23 So for the Cobb County stores that I 24 excerpted, this is all of the information from the 25 spreadsheet.</p>

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<p style="text-align: right;">Page 86</p> <p>1 MR. ARBITBLIT: Is there a particular page 2 of the witness's report you're referring to where 3 this is discussed? 4 MS. KAPKE: 143 and 144. 5 MR. ARBITBLIT: Thank you. 6 BY MS. KAPKE: 7 Q. Okay. So this spreadsheet has five 8 entries on it where Shannon Drost in Column E is 9 the rep name, and then the org name is Publix, 10 Powder Springs Road. And then in the notes, in 11 Column AF -- appear to be substantively identical, 12 saying "10/3/02 4:55:47." 13 Now, for these five entries, there is a 14 different call date. I honestly don't know if 15 these are five calls or one call on 10-3-02. 16 Do you have an opinion either way? 17 MR. ARBITBLIT: Object to form. 18 THE WITNESS: I -- I could infer that 19 these are separate call dates, that these are 20 all -- these dates represent different call dates. 21 BY MS. KAPKE: 22 Q. And then what would you make of the notes 23 in Column A4 (sic) for these calls, then? What 24 is -- what does the note say? 25 MR. ARBITBLIT: Object to form.</p>	<p style="text-align: right;">Page 88</p> <p>1 grocery store unannounced? 2 MR. ARBITBLIT: Object to form. 3 THE WITNESS: Even if it was 4 unannounced -- and I have no evidence, you know, 5 for or against that -- it's clear that this drug 6 rep had a conversation with the pharmacist and 7 that the pharmacist disclosed information about 8 opioids stock in the store. 9 BY MS. KAPKE: 10 Q. That they don't stock much of that 11 particular opioid? 12 A. As I said before, it may be that they just 13 didn't stock much of Percocet at that time and 14 they were stocking other opioids instead. It's 15 very common for certain prescribers to prescribe 16 certain types of opioids and not others and for 17 stores to stock certain types of opioids and not 18 others. 19 Q. Would Endo have wanted to sell any opioids 20 besides Percocet? 21 MR. ARBITBLIT: Object to form. 22 THE WITNESS: Endo would have wanted to 23 promote their opioid, but there's plenty of 24 evidence showing that the opioid industry wanted 25 to promote opioids more broadly to cause this</p>
<p style="text-align: right;">Page 87</p> <p>1 THE WITNESS: You mean here? 2 BY MS. KAPKE: 3 Q. Yes. 4 A. It says (as read): 5 "Bob still claims that he does not 6 see a demand for Percocet 325 even though 7 Dr. Towadros is right around the corner 8 from him. Go figure." 9 "Does not stock much Percocet at all. 10 Says that they don't see a lot of scripts 11 for Percocet." 12 What I would make of that is that it's a 13 very good example of how Endo drug reps, and drug 14 reps more broadly, could influence dispensing by 15 going and directly targeting pharmacists to 16 suggest that they might work closely and more 17 collaboratively with local doctors who are high 18 prescribers. That was the standard strategy for 19 drug reps. 20 The fact that they don't stock much 21 Percocet at all doesn't mean that they weren't 22 stocking other opioids. 23 Q. Do you have any evidence that Publix 24 corporate actually allowed this detailing, or is 25 it possible the Endo rep just walked into the</p>	<p style="text-align: right;">Page 89</p> <p>1 paradigm shift in opioid dispensing. 2 BY MS. KAPKE: 3 Q. Fair. And I'm asking because I don't 4 think most people would associate Endo with 5 Percocet specifically, and so I'm asking if you 6 can confirm that Percocet is Endo's drug. 7 MR. ARBITBLIT: Object to form. 8 THE WITNESS: I can't specifically 9 remember. 10 BY MS. KAPKE: 11 Q. Okay. That's fair. 12 Do you have any reason to suggest, after 13 looking at this spreadsheet, that Endo was 14 inquiring about a drug other than the drug that 15 they manufacture? 16 A. As I said before, the simple fact that the 17 Endo rep was in the store having a conversation 18 with the pharmacist and that that was allowed is 19 consistent with a broader pattern of Publix 20 actively engaging and relying on the opioid 21 pharmaceutical industry to educate pharmacists, 22 pharmacy store managers, et cetera, about the 23 proper dispensation of opioids. 24 Q. Doctor -- and I understand that you have 25 talking points that you want to get in, but we are</p>

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<p style="text-align: right;">Page 90</p> <p>1 going to be here all day if you don't answer my 2 question. 3 I asked: Do you have any reason to 4 suggest that Endo was inquiring about a drug other 5 than the drug that they manufacture? 6 That's a very, very narrow question, and 7 it shouldn't be a complicated point. 8 A. Well, then -- 9 MR. ARBITBLIT: Object -- object to form. 10 Object to the prelude. Ask a question. 11 BY MS. KAPKE: 12 Q. Do you have any reason to suggest that 13 Endo was inquiring about a drug other than the 14 drug that they manufacture? 15 A. Yes. 16 Q. At these Publix stores? 17 A. Yes. 18 Q. And what -- what is -- what were they 19 inquiring about? 20 MR. ARBITBLIT: Object to form. 21 THE WITNESS: As I have stated elsewhere 22 in this report, opioid manufacturers like Endo 23 were broadly promoting opioids as a class. 24 So they are not in the store merely to ask 25 specifically about their product or any specific</p>	<p style="text-align: right;">Page 92</p> <p>1 opinion that Publix collaborated with opioid 2 manufacturers and promoted opioids. I want to 3 make sure that I have all of the evidence we're 4 talking about here. 5 We've got the three continuing education 6 programs that Publix allowed Purdue to offer to 7 Publix pharmacists in 2001 and 2003, the email 8 forward from Paul Hines, the visits by an Endo rep 9 where the Endo rep notes that they don't stock 10 much Percocet at all, and the \$48 in Oxy rebates. 11 Are you aware of any evidence that Publix 12 corporate leadership was telling pharmacists what 13 to think about the use of pain and opioids besides 14 those things? 15 MR. ARBITBLIT: Object to the form. 16 THE WITNESS: I would add to that list 17 Publix's involvement with the National Association 18 of Chain Drug Stores -- 19 BY MS. KAPKE: 20 Q. Got it. 21 A. -- which was very involved in using their 22 national foothold to miseducate pharmacists. 23 And I think it's important for 24 completeness to emphasize that beyond opening 25 their doors to Purdue, NACDS, Endo, Publix</p>
<p style="text-align: right;">Page 91</p> <p>1 product. They're there to encourage pharmacists 2 to more easily and liberally dispense all opioids 3 for all pain conditions because that helped their 4 product. 5 BY MS. KAPKE: 6 Q. So in your opinion, what should a pharmacy 7 have done to prevent detailing from pharmaceutical 8 reps? 9 A. Well, Publix, in particular, since we're 10 talking about Publix, could have done so much more 11 to proactively educate their pharmacists about the 12 true risks and benefits of opioids, about red 13 flags, about how they can appropriately 14 investigate and document red flags, and much, much 15 more. 16 Q. Not my question, though. 17 A. Okay. 18 Q. My question is: What should a pharmacy 19 have done to prevent a pharmaceutical sales rep 20 from walking in the store and introducing 21 themselves at the pharmacy counter? 22 A. That's part of training and education. 23 Q. Okay. We'll talk about training, 24 education, red flags in a bit. 25 I want to wrap up our discussion of your</p>	<p style="text-align: right;">Page 93</p> <p>1 neglected evidence-based education around 2 controlled substances despite knowledge of the 3 opioid epidemic and despite having access to what 4 would have been appropriate and much-needed 5 education earlier on -- for example, red flags -- 6 which they ultimately did incorporate later, 7 relying on information and conceptualization of 8 red flags from NACDS, which they had access to 9 much earlier. 10 I know that's not exactly -- or beyond -- 11 that's somewhat beyond what you asked, but I think 12 for completeness, I need to emphasize there was 13 both a kind of -- sort of active engagement with 14 the industry and then a kind of delinquent 15 laziness otherwise. 16 That is just so you can understand my 17 opinion, because I know that's why you're here 18 today. 19 Q. No, and I appreciate that. 20 And that's -- that's one of the questions 21 that I wanted to ask, is: Just to kind of wrap up 22 the active engagement with industry versus the, as 23 you put it, delinquent laziness, I just -- I want 24 to understand, the active engagement with industry 25 is the examples we just talked about? There's</p>

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<p style="text-align: right;">Page 94</p> <p>1 nothing else; correct?</p> <p>2 A. Nothing else that I have specifically in</p> <p>3 the report.</p> <p>4 MS. KAPKE: Okay. That's a good time for</p> <p>5 a break, so why don't we take a short break.</p> <p>6 THE VIDEOGRAPHER: We are going off the</p> <p>7 record. The time is 10:30.</p> <p>8 (Recess taken.)</p> <p>9 THE VIDEOGRAPHER: We're back on the</p> <p>10 record. Time is 10:41.</p> <p>11 BY MS. KAPKE:</p> <p>12 Q. Okay. I want to go through the rest of</p> <p>13 Part 6 of your report.</p> <p>14 So subsections (i) and (j) generally talk</p> <p>15 about what pharmacies should have done and red</p> <p>16 flags, and then subsections (k) through (p) of</p> <p>17 your Track 8 report are about individual</p> <p>18 pharmacies, with subsection (p) about Publix</p> <p>19 specifically; is that correct?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. Are you aware of any evidence that</p> <p>22 Publix has ever offered, quote/unquote, time</p> <p>23 guarantees or, quote/unquote, promised time or a</p> <p>24 similar concept to patients for prescription</p> <p>25 fills?</p>	<p style="text-align: right;">Page 96</p> <p>1 pressures placed on pharmacists generally.</p> <p>2 Are you aware of any statement anywhere,</p> <p>3 whether in a deposition taken in this case, a</p> <p>4 Publix statement, anything else, where a Publix</p> <p>5 pharmacist complained that he or she did not have</p> <p>6 enough time to do his or her job or to safely fill</p> <p>7 prescriptions?</p> <p>8 A. Yes.</p> <p>9 Q. Where?</p> <p>10 A. Multiple depositions describe being</p> <p>11 understaffed, difficulty completing the job within</p> <p>12 their eight-hour day, having to stay additional</p> <p>13 hours, having to get more tech time to help</p> <p>14 complete the overwhelming number of tasks demanded</p> <p>15 of them, et cetera. Multiple depositions.</p> <p>16 Q. And do you reference those in your report?</p> <p>17 A. No. I mean, I reference them in the sense</p> <p>18 that I have reviewed them and they're in the</p> <p>19 report, but I don't think I specifically talk</p> <p>20 about that in the report.</p> <p>21 Q. Did you review any documents or</p> <p>22 information regarding the number of prescriptions</p> <p>23 that Publix expected its Georgia pharmacies or</p> <p>24 pharmacists to fill per day or per hour?</p> <p>25 A. I remember references to that in the</p>
<p style="text-align: right;">Page 95</p> <p>1 MR. ARBITBLIT: Object to form.</p> <p>2 THE WITNESS: I'm recalling that in one of</p> <p>3 the depositions -- at least one of the depositions</p> <p>4 of a Publix pharmacist, they talked about wait</p> <p>5 times and how they had metrics for wait times in</p> <p>6 their pharmacies.</p> <p>7 BY MS. KAPKE:</p> <p>8 Q. Whose deposition was that?</p> <p>9 A. I'm not recalling specifically which one.</p> <p>10 And it could have been more than one.</p> <p>11 Q. Is that referenced in your report?</p> <p>12 A. No.</p> <p>13 Q. Are you aware of any evidence that Publix</p> <p>14 has offered incentives or bonuses to pharmacists</p> <p>15 for filling prescriptions based on wait times?</p> <p>16 A. Not specifically based on wait times, but</p> <p>17 certainly on the number of prescriptions dispensed</p> <p>18 and on overall performance. And, typically,</p> <p>19 metrics like wait times would be a part of that,</p> <p>20 but I have not seen a specific document attesting</p> <p>21 to wait times being included as part of the bonus</p> <p>22 strategy.</p> <p>23 Q. You reference in your Appendix III the</p> <p>24 work environment for Georgia pharmacists, and</p> <p>25 several sections of your report discuss time</p>	<p style="text-align: right;">Page 97</p> <p>1 depositions of Publix pharmacists, but I did not</p> <p>2 myself review any documents other than those</p> <p>3 depositions.</p> <p>4 Q. Did you review any documents or</p> <p>5 information or have any opinion regarding Publix's</p> <p>6 expectations for how many prescriptions its</p> <p>7 pharmacists fill per day as compared to any other</p> <p>8 pharmacy?</p> <p>9 A. No.</p> <p>10 Q. Are you aware of any evidence specific to</p> <p>11 Publix that Publix pressures pharmacists to rush</p> <p>12 through the exercise of their corresponding</p> <p>13 responsibility?</p> <p>14 A. Yes.</p> <p>15 MR. ARBITBLIT: Object to form.</p> <p>16 BY MS. KAPKE:</p> <p>17 Q. What is that?</p> <p>18 A. Again, multiple depositions where Publix</p> <p>19 pharmacists describe the difficulty they have</p> <p>20 completing tasks, which I can infer includes red</p> <p>21 flags, as well as evaluations of Publix</p> <p>22 pharmacists that refer to their slowness or their</p> <p>23 inefficiency or their inability to get stuff done</p> <p>24 fast.</p> <p>25 Q. Tell me what you're referring to when</p>

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<p style="text-align: right;">Page 98</p> <p>1 you're referring to "evaluations of Publix 2 pharmacists that refer to their slowness or their 3 inefficiency or their inability to get stuff done 4 fast." 5 A. Depositions of Publix pharmacists include 6 questions about their managers evaluating their 7 performance, and included in those evaluations is, 8 as I'm recalling now, criticism of some Publix 9 pharmacists for not getting stuff done faster, 10 relying on too many techs to help, working too 11 many hours past the 40 hours that they're allotted 12 in a given week. 13 Q. And is this all from the depositions that 14 you reviewed? 15 A. Yes. 16 Q. And did you reference that specifically in 17 your report? 18 A. No. 19 Q. Your report discusses bonuses at length 20 for many pharmacies. I saw two references in your 21 report specific to Publix. 22 On page 211, you say (as read): 23 "In order to see the notes, the 24 pharmacist would have to have had -- have 25 had to click on the prior encounter to</p>	<p style="text-align: right;">Page 100</p> <p>1 that I just referenced, are you aware of any 2 information about the Publix bonus system? 3 A. No. 4 Q. Would you agree that to be incentivized by 5 a bonus calculation, the pharmacist has to know 6 about the calculation? 7 MR. ARBITBLIT: Object to form. 8 THE WITNESS: No, I would not agree with 9 that. 10 BY MS. KAPKE: 11 Q. Why not? 12 A. Because it's clear to me based on 13 interviews with Publix pharmacists in Cobb County 14 that they understood that they had to fill as many 15 prescriptions as possible. 16 The common phrasing, quote/unquote, 17 nothing walks, was well understood by Publix 18 pharmacists, meaning that when a patient comes in 19 the door with a prescription, the pharmacist needs 20 to do everything possible to fill the 21 prescription. 22 The fact that there were colloquialisms 23 around that makes it clear to me that the 24 pharmacists understood the pressure on them to 25 make a profit for the store.</p>
<p style="text-align: right;">Page 99</p> <p>1 open it, an extra step that requires more 2 time and is disincentivized by Publix 3 bonus strategy, which pays pharmacists 4 more if they fill more prescriptions, 5 including for controlled substances." 6 And then the second reference to bonuses 7 that I saw was romanette -- I'm probably going to 8 get it wrong -- xiv, I think -- maybe xix -- I 9 don't -- on page 213. 10 A. Yes, you're correct, xiv. 11 Q. Okay. And there, you cite a 2018 12 document, PUBLIX-MDLT8-00059249, and Lindsay 13 Burckhalter's deposition in that paragraph. 14 Did you review any other documents or 15 testimony regarding the Publix bonus system? 16 A. Yes. 17 Q. And are those on your supplemental 18 materials considered list? 19 A. Yes. And in -- I think in the main 20 materials considered list as well. 21 Q. Okay. And are those just the depositions 22 of Publix pharmacists? 23 A. Yes, and Publix pharmacy managers and 24 Publix corporate leaders. 25 Q. Besides depositions and the one document</p>	<p style="text-align: right;">Page 101</p> <p>1 It also came to my attention that Publix, 2 in particular, is a privately owned company that 3 its employees are part owners of or, I guess, have 4 stock in or shares of, so that's also a further 5 incentive beyond the bonus, the fact that they 6 directly profit as individuals if the store is 7 more profitable. 8 Q. Do you think independent pharmacies 9 should -- that are owned and operated by a 10 pharmacist should be banned? 11 MR. ARBITBLIT: Object to form. 12 THE WITNESS: No. 13 BY MS. KAPKE: 14 Q. Why not? 15 A. I'm not somebody who has studied 16 corporations in terms of private versus public 17 versus part ownership of employees. But, I mean, 18 I could -- it's common sense that if you are part 19 owner in an operation, you are potentially more 20 invested in the success of that company. So I can 21 see that as a potentially good strategy and a way 22 to maybe more fairly distribute the wealth. 23 However, when it comes to a store that's 24 profiting from dispensing opioids in the midst of 25 an opioid crisis, that's problematic.</p>

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<p style="text-align: right;">Page 102</p> <p>1 Q. So that would be true of the independent 2 pharmacies owned and operated by a pharmacist that 3 were dispensing opioids in the midst of an opioid 4 crisis, that those pharmacies' ownership by 5 pharmacists would be problematic? 6 A. I'm only commenting on the pharmacies that 7 I have had time to research. I don't want to make 8 broad statements about other pharmacies that I 9 haven't investigated. 10 Q. Do you believe that without corporate 11 training pharmacists should be allowed to dispense 12 opioids? 13 MR. ARBITBLIT: Object to form. 14 THE WITNESS: I'm not sure I understand 15 your question. 16 BY MS. KAPKE: 17 Q. So a solo pharmacist who does not receive 18 training from a corporation but owns and operates 19 a pharmacy, should that person, who does not 20 receive training from corporate, be allowed to 21 dispense opioids? 22 MR. ARBITBLIT: Object to form. 23 Incomplete hypothetical. 24 THE WITNESS: It really depends on whether 25 or not they were exercising their corresponding</p>	<p style="text-align: right;">Page 104</p> <p>1 Q. Do you recall reading Shannon Bryce's 2 deposition? 3 A. Yes. 4 Q. And are you aware that she testified she 5 did not know that the bonus calculation included 6 script count? 7 A. Yes. 8 Q. And do you understand that store 9 profitability -- whether the individual store, 10 including the deli department or the frozen food 11 section, is profitable -- is also part of the 12 bonus calculation? 13 A. Yes, I remember reading that. 14 Q. Not specific to Publix, but just 15 generally, do you cite in your report any study or 16 analysis about how much a bonus would need to be 17 to impact a pharmacist's clinical judgment? 18 MR. ARBITBLIT: Object to form. 19 THE WITNESS: I don't cite any studies 20 like that. 21 BY MS. KAPKE: 22 Q. Even more broadly than that, do you cite 23 in your report any study or analysis about how 24 small or large financial incentives need to be to 25 affect behavior?</p>
<p style="text-align: right;">Page 103</p> <p>1 responsibility. 2 BY MS. KAPKE: 3 Q. Should DEA and states license those 4 people? 5 MR. ARBITBLIT: Object to form. 6 THE WITNESS: If they're acting in 7 accordance with the law and exercising their 8 corresponding responsibility and not harming the 9 public, then yes. 10 BY MS. KAPKE: 11 Q. Have you reviewed any testimony from 12 Publix bench pharmacists where they can explain 13 what actually goes into their bonuses? 14 A. I have reviewed depositions where they 15 have a pretty good general idea. 16 Q. And what goes into the Publix bonus? 17 A. I would probably have to review that 18 section of those depositions, but their -- it's 19 clear that their understanding is that -- I 20 shouldn't say "it's clear." 21 My recollection now is that they 22 appreciate that nothing walks and how many scripts 23 are dispensed is part of how the success and 24 busyness of the store is measured, which then 25 contributes to their bonus.</p>	<p style="text-align: right;">Page 105</p> <p>1 A. No. 2 Q. You make note of the fact that Publix's 3 dispensing policy does not require checking of the 4 PDMP unless required by the state and Georgia law 5 does not require pharmacists to consult the PDMP 6 before dispensing a controlled substance. 7 When did PDMP become available in Georgia? 8 A. I believe it was 2017. 9 Q. When did it become mandatory for Georgia 10 prescribers to register for? 11 A. I believe it was 2018. 12 Q. Do you agree that if no prescribers are 13 uploading information to PDMP, that it has very 14 little value? 15 A. Yes. 16 (Whereupon, Lembke Exhibit 20 was marked 17 for identification.) 18 BY MS. KAPKE: 19 Q. I'm going to hand you what we've premarked 20 as Exhibit 20. 21 And this is a printout of a PDMP 22 commissioner letter, where it states -- 23 MR. ARBITBLIT: You gave me two copies. 24 It's the same thing; right? 25 MS. KAPKE: Yeah. Sorry.</p>

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<p style="text-align: right;">Page 106</p> <p>1 BY MS. KAPKE: 2 Q. -- (as read): 3 "Currently, only about 10 percent of 4 prescribers in Georgia are registered in 5 the PDMP." 6 Any basis to disagree with that 2017 7 message from the Georgia Department of Public 8 Health. 9 A. No. 10 Q. Do you agree that whether or not Publix 11 mandated using PDMP in Georgia is irrelevant to 12 whether Publix pharmacies in Cobb County 13 contributed to the quadrupling of opioid 14 prescriptions nationally between the mid-1990s and 15 2012? 16 MR. ARBITBLIT: Object to form. 17 THE WITNESS: Could you state that again. 18 I had difficulty following that question. 19 BY MS. KAPKE: 20 Q. Whether or not Publix mandated using PDMP 21 in Georgia, is that relevant to the question of 22 whether Publix pharmacies in Cobb County 23 contributed to the quadrupling of opioid 24 prescriptions nationally between the mid-1990s and 25 2012?</p>	<p style="text-align: right;">Page 108</p> <p>1 of a Publix employee was taken in this case and 2 today? 3 A. I believe that since that time, Publix has 4 implemented in their electronic medical record a 5 place in the notes for checking off whether the 6 pharmacist looked at or did not look at the PDMP. 7 But beyond that, I don't have any additional 8 knowledge. 9 Q. So -- and the reason I wanted to just 10 confirm on that -- your statement would certainly 11 be true as of, for instance, Lindsay Burckhalter's 12 deposition, but do you have any knowledge of what 13 Publix has or has not done with respect to making 14 PDMP mandatory after Lindsay Burckhalter's 15 deposition? 16 A. To my knowledge, they're still not 17 required to check the PDMP prior to dispensing. 18 They're required to be registered, and if they 19 find that there's something suspicious, then 20 they're supposed to check the PDMP. But they are 21 not pro forma mandated to check the PDMP before 22 dispensing a controlled substance. 23 If that's changed, I'd love to hear about 24 it, but I'm not aware that it has changed. 25 Q. Do you have criticisms on when or how PDMP</p>
<p style="text-align: right;">Page 107</p> <p>1 A. I mean, I wouldn't want to call it 2 irrelevant. Obviously, the time frame is such 3 that there was no PDMP between the mid-1990s and 4 2012, but it's not irrelevant in the sense that 5 I'm looking at the pattern in aggregate. 6 And the fact that Georgia -- sorry -- that 7 Publix still to this day does not require their 8 pharmacists to check the PDMP prior to dispensing 9 a controlled substance is consistent with the 10 broader pattern starting much earlier with regard 11 to how Publix has approached opioid dispensing and 12 training their pharmacists and guiding their 13 pharmacists and supporting their pharmacists 14 around their corresponding responsibility. 15 Q. The statement that "Publix still to this 16 day does not require their pharmacists to check 17 the PDMP prior to dispensing a controlled 18 substance," that's as of the last deposition that 19 was taken in this case; correct? 20 A. My understanding is that -- I'm sorry. 21 Let me read your question again. 22 Q. Let me -- let me rephrase it. 23 A. Okay. 24 Q. So do you have any information about what 25 Publix has done between when the last deposition</p>	<p style="text-align: right;">Page 109</p> <p>1 was integrated into Publix's pharmacy management 2 system? 3 MR. ARBITBLIT: Object to form. 4 THE WITNESS: Is that a different question 5 than what you have already asked me? 6 BY MS. KAPKE: 7 Q. Yeah, so I guess my question is, so as you 8 understand PDMP, in Georgia, did you have to go to 9 a website, log in, and check it separately? 10 A. Yes. You had to do that until, I believe, 11 recently. 12 Q. Yes. And that's my question. 13 Do you have criticisms of how Publix 14 integrated it into its pharmacy management system, 15 or do you understand that Publix could not have 16 integrated into its pharmacy management system 17 until it was implemented through the Georgia 18 Department of Public Health? 19 MR. ARBITBLIT: Object to form. 20 THE WITNESS: I don't have criticism of, 21 specifically, the logistics of them integrating it 22 in their PDMP. 23 But speaking more broadly to the when and 24 the how, they could have provided much more 25 support in their electronic medical records for</p>

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<p style="text-align: right;">Page 110</p> <p>1 investigating and clearing red flags, as I detail 2 in the report, much more training. 3 And they could have, from the get-go, as 4 soon as the PDMP was up and running and available, 5 required their pharmacists to check prior to 6 dispensing any controlled substance and to 7 document. And they did not do that. 8 BY MS. KAPKE: 9 Q. Okay. I want to discuss the monitoring 10 protocol that you implemented in 2013 at the 11 Stanford Outpatient Clinic. 12 You were asked questions in your Track 2 13 deposition about a system for monitoring orders 14 from the perspective of a clinician. Are we 15 talking about the same thing there? 16 A. Yes. 17 Q. Okay. 18 A. I know what you are talking about. 19 Q. That's what I thought, but I didn't want 20 to make that assumption. 21 Okay. I'm going to hand you -- I'm going 22 to try to short-circuit this. 23 MS. KAPKE: Oh, can I have her Track 2 24 deposition. 25 BY MS. KAPKE:</p>	<p style="text-align: right;">Page 112</p> <p>1 that testimony? 2 A. So, you know, I was on the stand here. 3 Q. Yeah. 4 A. And looking back, I feel that I misused 5 the term "suspicious order monitoring system." I 6 used it for a policy that I had put in place as we 7 initiated our addiction medicine fellowship. So 8 for fellows who were in that program that started 9 in 2013. 10 I put in a requirement that prior to 11 prescribing any controlled substance, that you 12 needed to check the PDMP prior to doing that, 13 whether or not they were suspicious, and that's 14 what I was referring to. 15 Q. Right. 16 A. So I think I -- I misused the term. I 17 don't mean to imply here that I had a suspicious 18 order monitoring system as the DEA uses that term. 19 Q. Right. 20 A. Okay. 21 Q. And I -- actually, I'm more focused on the 22 actual protocol itself. That's -- 23 A. Okay. 24 Q. I'm not worried about the -- what -- that 25 you called it that in 2020. I understand --</p>
<p style="text-align: right;">Page 111</p> <p>1 Q. I'm going to hand you the questions from 2 your Track 2 deposition, ask you to read it and 3 tell me if they're -- if you -- things you have to 4 add to that or anything like that. 5 If you want, we can read it out loud. I 6 just -- I have further follow-ups, and I figured 7 this would be easier. 8 A. Great. Thank you. 9 Q. Yeah. 10 MS. KAPKE: And for the record, this is 11 her 2020 Track 2 deposition, I believe starting on 12 page 162. 13 MS. MILLER: Exhibit 21? 14 MR. MATTINGLY: 161. 15 MS. KAPKE: 161. Starting on 161. 16 MS. MILLER: Is this an exhibit? 17 MS. KAPKE: I didn't mark it as an 18 exhibit. 19 THE WITNESS: Do you have a question for 20 me? 21 BY MS. KAPKE: 22 Q. Yeah. So I know it's been four years 23 since you were asked those questions. Have you 24 made any changes to the monitoring protocol or 25 otherwise thought about what you want to add to</p>	<p style="text-align: right;">Page 113</p> <p>1 A. Right. 2 Q. -- your caveat here. I just want to -- 3 and I have further questions. 4 A. Okay. 5 Q. But I just want to see if there are things 6 you've added to that protocol for prescribers at 7 the Stanford Outpatient Clinic. 8 A. Yeah, I think this is a fairly good 9 representation of what I do. The one thing that I 10 would add is that we do get urine toxicology 11 screens. 12 Q. When did you start getting urine 13 toxicology screens? 14 A. Well, we started getting urine toxicology 15 screens pretty much immediately, I mean, in 2013, 16 when we started the program. 17 Q. Okay. So -- and you mentioned it's a 18 policy. Is it written down somewhere? Like, can 19 you just describe how this gets implemented? I 20 mean, I know there's various aspects of it, but 21 how do the clinicians integrate the protocol? 22 MR. ARBITBLIT: Object to form. 23 THE WITNESS: So we have a document that 24 describes the policies in the clinic that includes 25 information about how to safely steward opioids</p>

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<p style="text-align: right;">Page 114</p> <p>1 and other controlled substances.</p> <p>2 But even more importantly, we met</p> <p>3 regularly, and we have a large interdisciplinary</p> <p>4 team meeting once a week in which we continue to</p> <p>5 discuss and have quality improvement around these</p> <p>6 issues.</p> <p>7 BY MS. KAPKE:</p> <p>8 Q. Is that document, like, one page, two</p> <p>9 pages? How --</p> <p>10 A. I mean, it includes a lot of information</p> <p>11 about how the clinic is run. I think the document</p> <p>12 by now is probably -- I don't know -- 10 pages,</p> <p>13 15 pages, something like that.</p> <p>14 Q. Is it proprietary to your clinic, or is</p> <p>15 that something you could produce to us?</p> <p>16 A. I'd have to look into that.</p> <p>17 Q. Okay.</p> <p>18 A. Yeah.</p> <p>19 Q. If you -- would you agree just to look</p> <p>20 into it and if you can produce it to us --</p> <p>21 A. Yes.</p> <p>22 Q. -- produce it to your counsel?</p> <p>23 MR. ARBITBLIT: Object to form. We'll</p> <p>24 take it up if it's still timely discovery.</p> <p>25 BY MS. KAPKE:</p>	<p style="text-align: right;">Page 116</p> <p>1 Those are things that can be seen and</p> <p>2 noted.</p> <p>3 Q. How do those alerts get implemented?</p> <p>4 A. The electronic medical record system has</p> <p>5 evolved over time, and so those have evolved as</p> <p>6 well with heightened awareness at Stanford around</p> <p>7 this problem.</p> <p>8 Q. When is the first time you had an alert</p> <p>9 about a particular patient that came up in the</p> <p>10 electronic medical record?</p> <p>11 A. I don't know.</p> <p>12 Q. Would it be in the last five or six years?</p> <p>13 MR. ARBITBLIT: Object to form.</p> <p>14 THE WITNESS: I genuinely don't know.</p> <p>15 BY MS. KAPKE:</p> <p>16 Q. Okay. Who implemented that integration?</p> <p>17 Was it -- I mean, did you program it, or did --</p> <p>18 was there an outside vendor that programmed it?</p> <p>19 Is it a particular department at Stanford?</p> <p>20 A. We have an electronic medical record team,</p> <p>21 and they are the ones who make those changes with</p> <p>22 input from many different entities.</p> <p>23 Q. Are you a part of that electronic medical</p> <p>24 record team that handles those logistics, or do</p> <p>25 you just provide the input into what types of</p>
<p style="text-align: right;">Page 115</p> <p>1 Q. Is there any part of the protocol that is</p> <p>2 integrated into the EMR computer system?</p> <p>3 A. We have now PDMP checking integrated into</p> <p>4 our electronic medical records.</p> <p>5 Q. Is that the only part that is incorporated</p> <p>6 into the EMR?</p> <p>7 MR. ARBITBLIT: Object to form.</p> <p>8 THE WITNESS: No. We have our notes</p> <p>9 fields, where we talk in detail about red flags</p> <p>10 and concerns that we have.</p> <p>11 We have lab results, including urine</p> <p>12 toxicology results. That's included in the EMR.</p> <p>13 BY MS. KAPKE:</p> <p>14 Q. Are there any nudges in the EMR and in the</p> <p>15 protocol? Do you know what I mean by that?</p> <p>16 A. Yeah, I do.</p> <p>17 Yeah, so there are -- the nudges would be</p> <p>18 the initial panel, where you can see diagnoses;</p> <p>19 you can see medications for patients who are known</p> <p>20 to be addicted or dependent. That is visible.</p> <p>21 And sometimes there are even alerts that</p> <p>22 come up for specific patients who are known to</p> <p>23 engage in doctor shopping or pharmacy shopping or</p> <p>24 repeatedly show up into the emergency room</p> <p>25 demanding opioids.</p>	<p style="text-align: right;">Page 117</p> <p>1 alerts that could be used?</p> <p>2 A. I have provided input.</p> <p>3 Q. Do you know the technical limitations of</p> <p>4 how that works from a technical perspective?</p> <p>5 That was a bad question. Let me ask it</p> <p>6 again.</p> <p>7 Do you -- do you have opinions on the</p> <p>8 technical feasibility of implementing systems like</p> <p>9 alerts into electronic medical records?</p> <p>10 MR. ARBITBLIT: Object to form.</p> <p>11 THE WITNESS: I mean, I have opinions</p> <p>12 insofar as I could see what the electronic medical</p> <p>13 record can already do for other types of issues</p> <p>14 that patients and systems have, and so I can see</p> <p>15 when a similar type of thing can be used for the</p> <p>16 purposes of safely stewarding opioids. But I'm</p> <p>17 not a computer programmer.</p> <p>18 BY MS. KAPKE:</p> <p>19 Q. And what types of -- similar types of</p> <p>20 things -- strike that.</p> <p>21 What types of things have you seen what</p> <p>22 the electronic medical record can already do for</p> <p>23 other types of issues that patients and systems</p> <p>24 have?</p> <p>25 A. Well, let me just speak to what -- if I</p>

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<p style="text-align: right;">Page 118</p> <p>1 didn't -- I think I need to elaborate on what our 2 electronic medical record is already doing. 3 If in our EMR system, we prescribe a 4 controlled substance, we get an automatic pop-up 5 telling us that we need to check the PDMP. And 6 only after we have gone through the dual security 7 process and checked the PDMP, which now 8 fortunately, we can do from within our EMR, are we 9 allowed to proceed with prescribing. 10 So that's one example, as I have 11 mentioned. 12 Q. Let me just ask a follow-up about that 13 example specifically. 14 That is the type of thing that has to do 15 with the integration that we talked about earlier, 16 that you have to rely on the state PDMP data to be 17 able to do that; correct. 18 A. Well, there has to be a PDMP, yeah. 19 Q. Right. And when did you get that pop-up? 20 A. I'm not remembering. It was years ago 21 now, but I don't remember when. 22 Q. Okay. So we've got the pop-up of, "Have 23 you checked the PDMP?" And you can't proceed 24 further until you've checked "yes"; is that 25 correct?</p>	<p style="text-align: right;">Page 120</p> <p>1 documentation around these issues. There's 2 mandated PDMP checking and documentation. 3 Q. Do you have anything in the protocol that 4 says -- a pop-up, for instance, that says, "This 5 is X number of enemies," or "This is X number of 6 pills; do you really want to prescribe this," or 7 something like that? 8 MR. ARBITBLIT: Object to form. 9 THE WITNESS: There may well be something 10 around quantities, so recommended against quantity 11 limits and such. 12 But, you know, I don't prescribe 13 Schedule II opioids for pain, and I think that 14 those are more likely to be found in those 15 settings. And we have a very safe stewardship of 16 buprenorphine, which is the opioid that I 17 prescribe. 18 BY MS. KAPKE: 19 Q. Are you in favor of those type of pop-ups 20 for prescribers, the, you know, "This is a 30-day 21 supply; should you consider prescribing a 10-day 22 supply" types of pop-ups? 23 MR. ARBITBLIT: Object to form. 24 THE WITNESS: I know that those types of 25 electronic medical record nudges can have a large</p>
<p style="text-align: right;">Page 119</p> <p>1 A. That's correct. But in my clinic, we were 2 mandating checking prior to that. 3 Q. Okay. And then are there other limits 4 that come up besides that pop-up? 5 A. Like I said, there are ways -- 6 First of all, our notes are found in a 7 single place, and it's very easy to go to the 8 notes section and scroll through notes in 9 chronological order and see what else is going on 10 with that patient. 11 We also have a function called Care 12 Everywhere, where we can go in and see if the 13 patient has presented at hospitals outside of 14 Stanford hospital, which is very useful, in 15 particular, for seeing a patient who is emergency 16 room shopping for opioids or other controlled 17 substances. 18 We've also developed a system internally 19 at Stanford for patients who are known to struggle 20 with a severe controlled substance problem and 21 engage in doctor shopping, drug seeking, to alert 22 providers in our system that this is a disease 23 process that this individual was struggling with. 24 So there's communication across treatment 25 settings, across providers. There's very good</p>	<p style="text-align: right;">Page 121</p> <p>1 impact. So when they are properly designed and 2 informed by the evidence, I think they can be 3 helpful. When they're not properly designed or 4 they're informed by things that aren't true and 5 not evidence-based, I think they can be harmful. 6 So it really depends on -- on what the -- 7 the pop-up is doing. 8 BY MS. KAPKE: 9 Q. You've testified about how pharmacies have 10 different data than prescribers and failed to use 11 or analyze their own dispensing data to assist 12 pharmacies and pharmacists in identifying 13 prescriber-related red flags. 14 Do you know how pharmacy data is stored at 15 Publix? 16 MR. ARBITBLIT: Object to form. 17 THE WITNESS: What data specifically would 18 you be talking about? 19 BY MS. KAPKE: 20 Q. The dispensing data contained in the 21 individual medical records, individual pharmacy 22 dispensations for individual patients at Publix. 23 A. I have some knowledge. 24 Q. What is that knowledge? 25 A. For example, I know from interviews with</p>

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<p style="text-align: right;">Page 122</p> <p>1 Publix pharmacists that they had kept hard copies 2 of prescriptions for controlled substances, that 3 they were required to scan in those hard copies; 4 that they had various notes fields in different 5 places that were, quote/unquote, difficult to dig 6 up, as I'm recalling from one of the depositions, 7 difficult to find, difficult to dig up, because 8 there were so many different notes fields and 9 different pharmacists would put notes in different 10 places, depending upon their own personal 11 practice. 12 I know that Publix pharmacists, because 13 they lacked, in my opinion, adequate support, 14 resources, and infrastructure for tracking things 15 like patients repeatedly coming in with fraudulent 16 prescriptions or with suspicious prescriptions or 17 prescribers who were writing illegitimate 18 prescriptions, that Publix pharmacists used 19 Post-its and emails and texts and phone calls to 20 communicate with each other, a kind of shadow 21 chart system to make up for the absence of a 22 system provided by Publix. 23 And I also know that Publix pharmacies 24 stores their prescriptions in cardboard boxes in 25 the back of their pharmacy that require a forklift</p>	<p style="text-align: right;">Page 124</p> <p>1 But I think there were also decisions as 2 early as the late 1990s, DEA decisions. I'm not 3 recalling now the names. 4 Q. Do you have an opinion on when that data 5 analysis of internal dispensing data was 6 technologically feasible? 7 A. No. 8 MR. ARBITBLIT: Object to form. 9 BY MS. KAPKE: 10 Q. Do you have an opinion on electronic -- 11 A. Let me -- sorry. Let me -- let me have a 12 fuller answer there. 13 I think it was technologically feasible, 14 again, from the very beginning. Even before 15 electronic medical records, it would have been 16 possible to create a system and keep files for 17 pharmacists to be able to be aware of who were the 18 patients, who were the doctors, what were the 19 types of fraudulent prescriptions that were coming 20 in. 21 And I believe that quite early on, Publix 22 had a -- had centralization of their customers so 23 that you could, at the very least, go in early and 24 see where else that customer had been beyond your 25 own Publix pharmacy.</p>
<p style="text-align: right;">Page 123</p> <p>1 to get them down. 2 Q. Do you know how or whether pharmacy 3 dispensing data can be queried at Publix, run a 4 search on it? 5 A. No. 6 Q. Do you have an opinion that Publix should 7 have conducted searches of its dispensing data to 8 identify, quote/unquote, bad doctors, or 9 problematic doctors? 10 A. Yes. 11 Q. And do you have an opinion on when that 12 type of data analysis should have been done? 13 A. It says within the Controlled Substances 14 Act that pharmacies have a responsibility to use 15 their own data to fulfill their corresponding 16 responsibility, so it should have been done at the 17 inception of Publix becoming a pharmacy. 18 Q. Is that understanding of the Controlled 19 Substances Act from the East Main Street case, 20 from CVS Holiday, from the decisions? Where is 21 that understanding of the Controlled Substances 22 Act from? 23 A. Holiday CVS as well as other DEA cases, 24 Shoppe, S-h-o -- Medical Shoppe, which I believe 25 was around 2006.</p>	<p style="text-align: right;">Page 125</p> <p>1 Q. At another Publix? 2 A. Yes, that's right. 3 Q. Not at another pharmacy besides Publix, 4 just another Publix? 5 A. That's right. 6 Q. Okay. Do you have an opinion on an 7 electronic prescription system that was available 8 on the market in 2006 that, in your opinion, had 9 better notes tracking than Publix's system? 10 MR. ARBITBLIT: Object to form. 11 THE WITNESS: Better notes tracking would 12 have been possible at Publix if, number one, 13 Publix had mandated proper documentation and, 14 number two, specified where in the existing system 15 that documentation should have occurred. It 16 didn't necessarily require a more sophisticated 17 electronic medical record system. 18 BY MS. KAPKE: 19 Q. You said (as read): 20 "It would have been possible to 21 create a system and keep files for 22 pharmacists to be able to be aware of who 23 were the patients, who were the doctors, 24 what were the types of fraudulent 25 prescriptions that were coming in."</p>

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<p style="text-align: right;">Page 126</p> <p>1 What would that system look like?</p> <p>2 MR. ARBITBLIT: Object to form.</p> <p>3 THE WITNESS: At the simplest level, that</p> <p>4 would have been a system in which Publix</p> <p>5 pharmacists were required to document at a place</p> <p>6 that could be centralized and easily found by</p> <p>7 other pharmacists any red flag, what they did to</p> <p>8 investigate the red flag, and whether or not they</p> <p>9 filled or not filled that prescription despite the</p> <p>10 red flag and exactly what they did and what their</p> <p>11 thinking process was if they did decide to</p> <p>12 dispense or not dispense.</p> <p>13 So a clear emphasis on and prioritization</p> <p>14 of investigating and clearing red flags and all it</p> <p>15 takes to do that properly.</p> <p>16 BY MS. KAPKE:</p> <p>17 Q. In your Track 3 deposition, you stated</p> <p>18 that you have expertise in, among other things,</p> <p>19 surveillance systems to detect misuse, addiction,</p> <p>20 and diversion, including prescription drug</p> <p>21 monitoring.</p> <p>22 When you talk about surveillance systems,</p> <p>23 are you talking about the system in which Publix</p> <p>24 pharmacists would be required to document the red</p> <p>25 flags and the documents and things like that, or</p>	<p style="text-align: right;">Page 128</p> <p>1 MS. KAPKE: It's page 9 of Track 3.</p> <p>2 BY MS. KAPKE:</p> <p>3 Q. While Frank is looking for that, let me</p> <p>4 just ask, do you have experience in surveillance</p> <p>5 systems?</p> <p>6 MR. ARBITBLIT: Object to form.</p> <p>7 THE WITNESS: What do you mean by</p> <p>8 "surveillance systems"?</p> <p>9 BY MS. KAPKE:</p> <p>10 Q. Okay. Good point. And that's why I'm</p> <p>11 asking.</p> <p>12 MS. KAPKE: Did you not print that one</p> <p>13 out?</p> <p>14 BY MS. KAPKE:</p> <p>15 Q. You, obviously, have a lot of experience</p> <p>16 with prescription drug monitoring protocols, with</p> <p>17 the Stanford monitoring protocol, and you've done</p> <p>18 a lot of academic detailing on opioid stewardship.</p> <p>19 I'm not trying to minimize that.</p> <p>20 What I am trying to do is figure out if</p> <p>21 there's something additional besides your</p> <p>22 extensive work doing academic detailing that gives</p> <p>23 you expertise to talk about systems involving</p> <p>24 pharmacy opioid stewardship.</p> <p>25 MR. ARBITBLIT: Object to form.</p>
<p style="text-align: right;">Page 127</p> <p>1 are there other surveillance systems that you are</p> <p>2 talking about?</p> <p>3 MR. ARBITBLIT: Object to form.</p> <p>4 Do you have the deposition -- the</p> <p>5 transcript of the testimony you just referred to?</p> <p>6 MS. KAPKE: Uh-huh.</p> <p>7 MR. ARBITBLIT: I'd like the witness to</p> <p>8 have an opportunity to look at it before</p> <p>9 answering.</p> <p>10 MS. KAPKE: That's fine.</p> <p>11 MR. ARBITBLIT: Thank you for being so</p> <p>12 prepared.</p> <p>13 I think one of these is probably still</p> <p>14 yours -- oh.</p> <p>15 Well, I spoke prematurely. There's not</p> <p>16 much context here about what came before or after</p> <p>17 one particular answer, so...</p> <p>18 And I don't see any -- I don't see the</p> <p>19 word "surveillance," unless I'm missing it. Is</p> <p>20 this the -- is this the excerpt you meant to show</p> <p>21 me?</p> <p>22 MS. KAPKE: No.</p> <p>23 MR. ARBITBLIT: Compliment withdrawn.</p> <p>24 MS. KAPKE: Sorry about that.</p> <p>25 MR. ARBITBLIT: Or held in reserve.</p>	<p style="text-align: right;">Page 129</p> <p>1 THE WITNESS: I feel I have expertise on</p> <p>2 systems involving pharmacy opioid stewardship</p> <p>3 based on all the things that you have already</p> <p>4 mentioned -- I feel that gives me expertise -- as</p> <p>5 well as long clinical experience interacting with</p> <p>6 pharmacies, interacting with pharmacists, and all</p> <p>7 of the documents that I've reviewed for this</p> <p>8 litigation.</p> <p>9 BY MS. KAPKE:</p> <p>10 Q. And part of what I'm asking about is to</p> <p>11 try and just make sure that I understand. Is</p> <p>12 there something else, besides all of that, that I</p> <p>13 am missing or that I don't know about?</p> <p>14 A. I don't think so.</p> <p>15 Q. Okay.</p> <p>16 MS. KAPKE: Okay. Do you have this one,</p> <p>17 Frank?</p> <p>18 BY MS. KAPKE:</p> <p>19 Q. I think it's a -- and I don't want to put</p> <p>20 words in your mouth, but I think it's a fair</p> <p>21 summary of your opinions that the pharmacies</p> <p>22 you've testified to should have put better systems</p> <p>23 in place earlier. And we talked about the</p> <p>24 documentation of red flags as part of that system.</p> <p>25 Can you name me a specific system that</p>

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<p style="text-align: right;">Page 130</p> <p>1 Publix had the means to put in place besides 2 encouraging their pharmacists to document red 3 flags? 4 MR. ARBITBLIT: Object to form. 5 THE WITNESS: Publix could have put in 6 place a much better training and educational 7 system. 8 BY MS. KAPKE: 9 Q. Okay. So better training, better 10 education, and encourage pharmacists to document 11 red flags. 12 Are there other systems that you think 13 Publix should have done? 14 MR. ARBITBLIT: Object to form. 15 Mischaracterizes opinions. 16 THE WITNESS: So I didn't say encourage -- 17 BY MS. KAPKE: 18 Q. And I didn't mean to misstate your 19 testimony. I genuinely am trying to get -- 20 A. Yeah. 21 Q. -- to the bottom of your opinion here. 22 So -- 23 A. Okay. 24 MR. ARBITBLIT: Well, there's no pending 25 question that hasn't been objected to, so wait for</p>	<p style="text-align: right;">Page 132</p> <p>1 providing pharmacists with an ability to 2 communicate with each other in a single pharmacy 3 and across pharmacies around patients who are 4 engaging in fraudulent or drug-seeking behavior, 5 prescribers who are engaging in writing 6 illegitimate prescriptions; having a system that 7 educates pharmacists about the bias when they're 8 exposed to literature and pamphlets and 9 educational material that was made or promoted by 10 the opioid pharmaceutical industry. 11 And, again, all of these sort of -- sort 12 of hidden incentives -- for example, as I've 13 stated before, opioid prescriptions should not be 14 included in a bonus plan or an incentive plan. 15 And pharmacists need enough time in order to 16 actually do the work of clearing red flags. 17 That's all part of the system. 18 So the pharmacy needs to provide the 19 training, the time, the incentives, and the 20 infrastructure, and I feel that Publix and 21 Albertsons did not provide adequate training time, 22 incentives, or infrastructure for their 23 pharmacists to be able to exercise their 24 corresponding responsibility. 25 BY MS. KAPKE:</p>
<p style="text-align: right;">Page 131</p> <p>1 a different question. 2 BY MS. KAPKE: 3 Q. So what did I misstate about encourage 4 pharmacists to document red flags? 5 MR. ARBITBLIT: Object to form. 6 BY MS. KAPKE: 7 Q. Is it encourage pharmacists to document 8 red flag resolutions? 9 MR. ARBITBLIT: Object to form. 10 It's not her job to clarify your question. 11 Ask another question. 12 MS. MILLER: She's got a question pending. 13 She can answer that. 14 MR. ARBITBLIT: If you can answer it, you 15 can answer. 16 THE WITNESS: Okay. Yes, I think 17 mandating documentation around red flags, not just 18 encouraging; putting red flag checklists in place 19 that further mandate and encourage and prioritize 20 that activity. 21 As I've said, much, much more science- 22 informed training and emphasis on the importance 23 of investigating red flags and documenting that 24 investigation and the due diligence required to 25 investigate and clear or not clear red flags;</p>	<p style="text-align: right;">Page 133</p> <p>1 Q. Okay. I want to focus right now only on 2 the infrastructure part of that. 3 A. Okay. 4 Q. That's what I am trying to pin down. And 5 I believe that you have talked about, within the 6 infrastructure, the places where you would have 7 notes fields. 8 Are there other aspects of the 9 infrastructure -- not talking about training time 10 or incentives -- that you think Publix or any 11 other pharmacy should have implemented? 12 A. Part of the infrastructure is Publix's 13 reference and procedure guide, which, by my read, 14 Publix pharmacists had only limited or no 15 awareness of. 16 So more requirements to be familiar with 17 that reference and procedure guide, to have more 18 training on the reference and procedure guide, to 19 have electronic medical record support for 20 accomplishing what the reference and procedure 21 guide should have accomplished. 22 Publix didn't incorporate even a mention 23 of red flags in its reference and procedure guide 24 until 2012. It should have been there much 25 earlier, along with training, support, all of</p>

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<p style="text-align: right;">Page 134</p> <p>1 that.</p> <p>2 Q. You mentioned EMR support. Is the lack of</p> <p>3 EMR support in the Publix system, the lack of</p> <p>4 nudges, so to speak, part of your opinion about</p> <p>5 what Publix did wrong here?</p> <p>6 MR. ARBITBLIT: Object to form.</p> <p>7 Mischaracterizes.</p> <p>8 BY MS. KAPKE:</p> <p>9 Q. And I'll just say, I'm genuinely asking.</p> <p>10 I can't mischaracterize if I'm --</p> <p>11 A. Yeah.</p> <p>12 Q. -- if I'm asking a question.</p> <p>13 A. I mean, I think the --</p> <p>14 MR. ARBITBLIT: Object to the prelude to</p> <p>15 the question.</p> <p>16 THE WITNESS: We can all appreciate that</p> <p>17 electronic medical records have evolved greatly</p> <p>18 over the past 25 years, and my opinion is that as</p> <p>19 soon as Publix was able to incorporate nudges and</p> <p>20 infrastructure and support and mandates and</p> <p>21 requirements and guardrails and stopgaps in their</p> <p>22 EMR, they should have done so.</p> <p>23 My read of the evidence is that they</p> <p>24 dawdled; they didn't do it as soon as they could</p> <p>25 have and as soon as they should have.</p>	<p style="text-align: right;">Page 136</p> <p>1 required to check the PDMP before dispensing a</p> <p>2 controlled substance, you know, which they did not</p> <p>3 do.</p> <p>4 From early on, they could have and should</p> <p>5 have made a centralized place for pharmacists at</p> <p>6 Publix to communicate with each other instead of</p> <p>7 through Post-its, texts, phone calls, and email</p> <p>8 messages about concerning patients, concerning</p> <p>9 providers in the community.</p> <p>10 I'm sure there's more, but that's what</p> <p>11 comes to mind now.</p> <p>12 Q. Is it your opinion that corporate</p> <p>13 pharmacies should implement blocks on certain</p> <p>14 prescribers so that pharmacists are not permitted</p> <p>15 to fill scripts from those prescribers?</p> <p>16 A. Yes.</p> <p>17 Q. And in your opinion, is that true even if</p> <p>18 those prescribers are still licensed by the DEA?</p> <p>19 A. So let me say that if somebody -- if a</p> <p>20 prescriber no longer has a valid DEA license,</p> <p>21 there should be a block on that prescriber.</p> <p>22 If that prescriber is in jail and</p> <p>23 convicted of writing fraudulent or illegitimate</p> <p>24 prescriptions, there should be a block on that</p> <p>25 prescriber.</p>
<p style="text-align: right;">Page 135</p> <p>1 And, further, my opinion is that even</p> <p>2 separate from the EMR, they could have taken many</p> <p>3 different steps to provide support, training,</p> <p>4 infrastructure, et cetera.</p> <p>5 BY MS. KAPKE:</p> <p>6 Q. Can you give me a date that they would</p> <p>7 have been able to incorporate those EMR support?</p> <p>8 MR. ARBITBLIT: Object to form.</p> <p>9 THE WITNESS: Well, as soon as they had --</p> <p>10 You mean, in the electronic medical</p> <p>11 record? Is that your -- you are specifically</p> <p>12 asking about the EMR?</p> <p>13 BY MS. KAPKE:</p> <p>14 Q. Yes.</p> <p>15 A. Okay. So from the very inception of the</p> <p>16 EMR, they could have created a specific notes</p> <p>17 field where all pharmacists would have been</p> <p>18 required to go to document their investigation of</p> <p>19 red flags, their thinking, their due diligence,</p> <p>20 and whether they dispensed or did not dispense.</p> <p>21 And they could have made it clear to all</p> <p>22 of the pharmacists exactly which notes fields that</p> <p>23 was, which they never did and still haven't done.</p> <p>24 As soon as there was a PDMP, they could</p> <p>25 have had in the EMR a place where they were</p>	<p style="text-align: right;">Page 137</p> <p>1 Or even if there is a prescriber in the</p> <p>2 community who is a well -- part of a well-known</p> <p>3 pill mill, that there should be consideration, at</p> <p>4 the very least, of a block on that prescriber.</p> <p>5 Q. Do you identify any specific prescribers</p> <p>6 who, in your opinion, should have been on a "do</p> <p>7 not fill" list, such that Publix corporate blocked</p> <p>8 individual pharmacists from dispensing scripts</p> <p>9 to those prescribers?</p> <p>10 A. I'll have to look at my report.</p> <p>11 Q. Okay.</p> <p>12 A. I'm not recalling any specific names right</p> <p>13 now.</p> <p>14 Q. Are you aware of any public statements</p> <p>15 made by legislators in Cobb County and Georgia</p> <p>16 about the corporate practice of pharmacy?</p> <p>17 A. How are you defining "legislators"?</p> <p>18 Q. Individuals who are elected</p> <p>19 representatives.</p> <p>20 A. Okay. So on page 394 of my report (as</p> <p>21 read):</p> <p>22 "Major Vincent Hester of Cobb County</p> <p>23 Sheriff's Office made statements about</p> <p>24 'Prescription pain sales on the street</p> <p>25 have slowed way down with the increase in</p>

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<p style="text-align: right;">Page 138</p> <p>1 heroin use'" and -- et cetera.</p> <p>2 You can see what's written there.</p> <p>3 Q. Anything else?</p> <p>4 A. I think it's possible that comments made</p> <p>5 here on behalf of the Georgia Department of Public</p> <p>6 Health could have included elected officials.</p> <p>7 It's possible that the comments, again, in</p> <p>8 my appendix, on page 395 for the Cobb County</p> <p>9 medical examiner's office could have included</p> <p>10 elected officials -- sometimes those individuals</p> <p>11 are elected -- as well as the Atlanta-Carolinas</p> <p>12 High Intensity Drug Trafficking Areas. I don't</p> <p>13 know who sits on that committee. They could have</p> <p>14 included elected officials.</p> <p>15 Page 396 of my report, Cobb and Douglas</p> <p>16 Public Health, I don't know who sits on that</p> <p>17 committee. It could have been elected officials.</p> <p>18 Page 397 of my report, the Georgia Bureau</p> <p>19 of Investigation reported significant increase in</p> <p>20 fentanyl and purple heroin. Could have included</p> <p>21 elected officials.</p> <p>22 Q. Okay.</p> <p>23 MS. KAPKE: I'm going to hand you what I</p> <p>24 have marked as Lembke Exhibit 23.</p> <p>25 (Whereupon, Lembke Exhibit 23 was marked</p>	<p style="text-align: right;">Page 140</p> <p>1 important.</p> <p>2 MS. KAPKE: How much time do we have left</p> <p>3 on the record? Or how much time has expired?</p> <p>4 THE VIDEOGRAPHER: On this record right</p> <p>5 now? One hour and ten minutes.</p> <p>6 MR. ARBITBLIT: Left?</p> <p>7 THE VIDEOGRAPHER: That we've been on in</p> <p>8 this segment.</p> <p>9 MR. ARBITBLIT: Plus 2:12.</p> <p>10 MS. KAPKE: Okay. Thanks.</p> <p>11 MR. ARBITBLIT: So we have 98 minutes of</p> <p>12 testimony left.</p> <p>13 MS. KAPKE: Well, I --</p> <p>14 MR. ARBITBLIT: That's the math.</p> <p>15 MS. KAPKE: I -- well, while Dr. Lembke is</p> <p>16 reading, I will state that we agreed to the</p> <p>17 five-hour limitation because we were told that</p> <p>18 there was a limited ambit of defendant-specific</p> <p>19 information, and I believe that that is -- and the</p> <p>20 way this deposition has proceeded, that we should</p> <p>21 be allotted more time. But I will just preserve</p> <p>22 that for the record.</p> <p>23 MR. ARBITBLIT: Well, of course, we object</p> <p>24 to that and would point out to whoever decides the</p> <p>25 issue, if you bring it, that a lot of the</p>
<p style="text-align: right;">Page 139</p> <p>1 for identification.)</p> <p>2 BY MS. KAPKE:</p> <p>3 Q. And I have a very short question about</p> <p>4 this.</p> <p>5 There's a highlighted statement there, and</p> <p>6 I just want to confirm whether you --</p> <p>7 MS. KAPKE: And Frank is looking for a</p> <p>8 extra copy, and I don't think he has one.</p> <p>9 BY MS. KAPKE:</p> <p>10 Q. The highlighted version, is that one of</p> <p>11 those statements that you believe is misleading?</p> <p>12 MR. ARBITBLIT: Wait until I get a chance</p> <p>13 to look at it after you're done since they don't</p> <p>14 have a copy.</p> <p>15 BY MS. KAPKE:</p> <p>16 Q. And, again, my question is very short.</p> <p>17 Is the highlighted sentence misleading or</p> <p>18 not?</p> <p>19 MR. ARBITBLIT: I think that --</p> <p>20 THE WITNESS: I'm just trying to figure</p> <p>21 out what --</p> <p>22 MR. ARBITBLIT: -- even a short</p> <p>23 question --</p> <p>24 THE WITNESS: -- what the document is.</p> <p>25 MR. ARBITBLIT: Context is always</p>	<p style="text-align: right;">Page 141</p> <p>1 questioning has had nothing to do with</p> <p>2 defendant-specific issues. So whatever time was</p> <p>3 spent on those questions and answers is your</p> <p>4 choice.</p> <p>5 MS. MILLER: And just make a record that,</p> <p>6 to the contrary, there was a lot of Publix-</p> <p>7 specific questioning and answers that took place</p> <p>8 over the past period of time and which is not</p> <p>9 attributed to Albertsons, so I will have</p> <p>10 objections to the amount of time that I'm given.</p> <p>11 MR. ARBITBLIT: You --</p> <p>12 MS. MILLER: Let's move it along.</p> <p>13 MR. ARBITBLIT: You had your choice how to</p> <p>14 divide up the time.</p> <p>15 THE WITNESS: Okay. Can you repeat your</p> <p>16 question.</p> <p>17 BY MS. KAPKE:</p> <p>18 Q. Is the sentence in yellow misleading?</p> <p>19 MR. ARBITBLIT: I have not seen the</p> <p>20 document yet since you haven't brought one.</p> <p>21 MS. KAPKE: Counsel, if you are going to</p> <p>22 review the document, we'll go off the record.</p> <p>23 MR. ARBITBLIT: You have a responsibility</p> <p>24 to provide copies for counsel. That's basic rule</p> <p>25 in this six-year long litigation. I would be</p>

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<p style="text-align: right;">Page 142</p> <p>1 happy to have been looking at it if you had 2 brought a copy. It's not my job to do your job 3 for you. 4 MS. KAPKE: At this point, you are, 5 frankly, just wasting time. 6 MR. ARBITBLIT: I am not wasting time. I 7 have an -- I object to the question. 8 MS. KAPKE: Okay. I'll withdraw the 9 question, then. 10 MR. ARBITBLIT: Fine. 11 BY MS. KAPKE: 12 Q. I'm going to ask a couple of quick 13 questions about the Stanford-Lancet Commission 14 report. 15 Which section of the report did you 16 facilitate? 17 MR. ARBITBLIT: Object to form. 18 Misleading. 19 THE WITNESS: That's not how the report 20 was constructed. We individually worked on 21 different sections, and then there was not 22 complete, but broad consensus. I am not now 23 recalling specifically which sections I worked on. 24 BY MS. KAPKE: 25 Q. Okay. Were you ever in the 10 percent of</p>	<p style="text-align: right;">Page 144</p> <p>1 the spate of multibillion dollar lawsuits 2 surrounding the opioid crisis in the 3 U.S.A. can also create conflicts of 4 interest. 5 "We propose that restrictions on 6 regulatory bodies should apply not only to 7 material connections to the pharmaceutical 8 industry, but also to law firms suing some 9 element of the industry and to people 10 hired as expert witnesses by those firms." 11 Q. Did you dispute or dissent from that 12 paragraph? 13 A. So the discussion of that paragraph -- the 14 discussion that led to that paragraph was whether 15 or not people who had been engaged as medical 16 expert witnesses in opioid litigation should have 17 to declare that prior to giving a presentation or 18 submitting a journal article for publication. 19 And I was in wholehearted agreement that 20 they should have to do that. So I agreed with 21 this paragraph. 22 Q. And on page 34, in the first column, 23 midway down, there is a recommendation that (as 24 read): 25 "Policymakers should consider</p>
<p style="text-align: right;">Page 143</p> <p>1 allowable dissenting voices to the conclusions or 2 recommendations of the report? 3 A. Probably, because I am recalling that 4 there was not 100 percent consensus. But, again, 5 I would have to go back and carefully reread the 6 report to be able to tell you where that was, 7 assuming I can remember. 8 Q. Do you agree that sensible opioid 9 stewardship programs recognize that patients can 10 be harmed by clinical decisions to prescribe or 11 not to prescribe opioids? 12 A. Yes. 13 Q. And would you agree that the same is true 14 with respect to dispensing, patients can be harmed 15 by clinical decisions to dispense or not to 16 dispense opioids? 17 A. Yes. 18 Q. Did you dispute or dissent from the last 19 paragraph on page 16? 20 A. Page 16. Okay. 21 This is the "Finally, the Commission" 22 paragraph? 23 Q. Yes. Why don't you read it out loud. 24 A. Okay. (As read): 25 "Finally, the Commission notes that</p>	<p style="text-align: right;">Page 145</p> <p>1 experimenting with requiring opioid 2 manufacturers to fund a program that would 3 reward pharmacy customers returning the 4 unused portion of controlled substance 5 prescriptions; for example, a discount 6 coupon for in-store purchases." 7 Do you see that? 8 A. Page 34. Could you point with your 9 finger? 10 Q. Yeah, it's right there. 11 MS. KAPKE: And we'll mark as 12 Exhibit 24 -- 13 (Whereupon, Lembke Exhibit 24 was marked 14 for identification.) 15 BY MS. KAPKE: 16 Q. Here's a copy from the -- 17 A. Okay. Thank you. 18 Q. -- the website. It's the same language, 19 with British versus American spelling. 20 A. Give me a moment to read the paragraph. 21 Q. Sure. 22 A. Thank you. 23 Frankly, I'm not fully understanding what 24 this paragraph means, especially the last 25 sentence, "e.g., a discount coupon for in-store</p>

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<p style="text-align: right;">Page 146</p> <p>1 purchases."</p> <p>2 To me, that doesn't fit with the rest of</p> <p>3 the paragraph, which states that there should be</p> <p>4 drug take-back programs that would be funded by</p> <p>5 opioid manufacturers.</p> <p>6 So I'm a little confused by this</p> <p>7 paragraph.</p> <p>8 Q. Did you dispute or dissent from</p> <p>9 Recommendation 5a?</p> <p>10 A. I don't have a recollection --</p> <p>11 recollection of this specific paragraph. And as I</p> <p>12 said, the way that it finishes seems like a non</p> <p>13 sequitur to me.</p> <p>14 Q. And Exhibit 24 is that recommendation on</p> <p>15 the Stanford website; correct?</p> <p>16 A. I don't know what Stanford website you're</p> <p>17 talking about.</p> <p>18 Q. Okay. That's fair.</p> <p>19 MS. KAPKE: I -- we'll mark as</p> <p>20 Exhibit 25 --</p> <p>21 MR. ARBITBLIT: Since you are going on, I</p> <p>22 will just read for completeness from the same</p> <p>23 paragraph above what you asked the witness to</p> <p>24 agree to.</p> <p>25 Quote (as read):</p>	<p style="text-align: right;">Page 148</p> <p>1 MS. KAPKE: Is it on Exhibit 24?</p> <p>2 MR. ARBITBLIT: -- that you asked the</p> <p>3 witness to look at.</p> <p>4 MS. KAPKE: And, frankly, I mean, we're</p> <p>5 just wasting time, so I'm going to move on.</p> <p>6 (Whereupon, Lembke Exhibit 25 was marked</p> <p>7 for identification.)</p> <p>8 BY MS. KAPKE:</p> <p>9 Q. I'm going to hand you Exhibit 25. This is</p> <p>10 the supplemental materials considered list that</p> <p>11 you have reviewed since April 15th, which was</p> <p>12 provided to us after our agreement, which is</p> <p>13 another basis to void the agreement.</p> <p>14 But putting that aside, have you reviewed</p> <p>15 the materials on this list, Dr. Lembke?</p> <p>16 A. Yes.</p> <p>17 Q. Prior to reviewing these materials, had</p> <p>18 you ever reviewed a Motion for Summary Judgment?</p> <p>19 A. Not that I am recalling.</p> <p>20 Q. Can you tell me in your own words what a</p> <p>21 Motion for Summary Judgment is?</p> <p>22 A. A Motion for Summary Judgment is an</p> <p>23 endeavor to get the Court to dismiss the case</p> <p>24 because of overwhelming evidence for the</p> <p>25 plaintiffs.</p>
<p style="text-align: right;">Page 147</p> <p>1 "Prohibitions against pharmaceutical</p> <p>2 industry influences in this arena are</p> <p>3 justifiable entirely because of concerns</p> <p>4 about protecting patients, but such rules</p> <p>5 also protect" --</p> <p>6 MS. KAPKE: Counsel --</p> <p>7 MR. ARBITBLIT: (As read):</p> <p>8 -- "prescribers who practice" --</p> <p>9 MS. KAPKE: Counsel --</p> <p>10 MR. ARBITBLIT: (As read):</p> <p>11 -- "ethically and compassionately."</p> <p>12 MS. KAPKE: This is ridiculous.</p> <p>13 MR. ARBITBLIT: (As read):</p> <p>14 "Like patients, physicians have a</p> <p>15 right to expect that the rules under which</p> <p>16 they prescribe were set based on</p> <p>17 scientific evidence and intended solely to</p> <p>18 benefit patients, not to enrich</p> <p>19 corporations," end of quote.</p> <p>20 It's not ridiculous. It's the rule for</p> <p>21 completeness. It exists for a reason.</p> <p>22 MS. KAPKE: Okay. And is that on</p> <p>23 Exhibit 24?</p> <p>24 MR. ARBITBLIT: It's on the Stanford-</p> <p>25 Lancet document --</p>	<p style="text-align: right;">Page 149</p> <p>1 Q. Did you ask to review Publix's response to</p> <p>2 this motion?</p> <p>3 A. No. I didn't know there was a response to</p> <p>4 the motion.</p> <p>5 Q. Was this just provided to you without you</p> <p>6 asking, or did you ask to see it?</p> <p>7 A. It was provided without my asking.</p> <p>8 Q. You've previously testified that you are</p> <p>9 very careful to look at things like any conflict</p> <p>10 of interest that authors may have. Is that still</p> <p>11 the case?</p> <p>12 A. Yes.</p> <p>13 Q. Did you consider the conflict of interest</p> <p>14 the authors of the Motion for Summary Judgment</p> <p>15 have?</p> <p>16 A. Well, I mean, I wouldn't call it a</p> <p>17 conflict of interest. I would call it a given</p> <p>18 that they have an interest in that perspective.</p> <p>19 It's not really a conflict. A conflict implies</p> <p>20 possibly a hidden agenda or a side gig that might</p> <p>21 be influencing what this entity is doing right</p> <p>22 here now. The Summary Motion for Judgment is</p> <p>23 clearly the interest of the plaintiff.</p> <p>24 Q. And you'd agree that authors who stand to</p> <p>25 make millions of dollars in attorneys fees if</p>

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<p style="text-align: right;">Page 150</p> <p>1 successful have an incentive to be misleading; 2 correct? 3 MR. ARBITBLIT: Object to form. 4 (Clarification requested by Reporter.) 5 BY MS. KAPKE: 6 Q. You'd agree that authors who stand to make 7 millions of dollars in attorneys fees if 8 successful have an incentive to be misleading? 9 MR. ARBITBLIT: Same objection. 10 THE WITNESS: In this case, who are the 11 authors that you're referring to? 12 BY MS. KAPKE: 13 Q. The attorneys for Cobb County. 14 MR. ARBITBLIT: Object to form. 15 THE WITNESS: Yeah, so I have based my 16 opinion on my own investigations, not on this 17 document. 18 MS. KAPKE: Okay. Let's -- I got a note 19 from the court reporter (sic) that we need a media 20 change, so let's go off the record. 21 THE VIDEOGRAPHER: We are going off the 22 record. The time is 12:06. 23 (Off the record.) 24 THE VIDEOGRAPHER: We are back on the 25 record. Time is 12:07.</p>	<p style="text-align: right;">Page 152</p> <p>1 specific place you're talking about? I was 2 looking for the report, of course, and didn't see 3 it. 4 BY MS. KAPKE: 5 Q. Yeah. 6 Here it is, top of 391. 7 A. Okay. 8 THE VIDEOGRAPHER: And your mic. 9 MS. KAPKE: Thanks. 10 THE WITNESS: What's your question again? 11 BY MS. KAPKE: 12 Q. Why did you use what's available on The 13 Washington Post website instead of the ARCOS data 14 processed by plaintiffs' expert, Craig McCann? 15 A. No particular reason. It seemed like a 16 reliable source. 17 Q. Did you just filter the "buyer name" 18 column for "Publix" and the "buyer city" for 19 "Marietta"? 20 A. I don't remember. 21 Q. Okay. Did you include in your report that 22 CVS pharmacies in Marietta received more than 23 double the number of pills as Publix pharmacies in 24 Marietta? 25 MR. ARBITBLIT: Objection to form.</p>
<p style="text-align: right;">Page 151</p> <p>1 BY MS. KAPKE: 2 Q. I am going to hand you -- actually, 3 scratch that. 4 I want to ask about your Cobb 5 County-specific appendix in your report. You 6 reference that from 2006 to 2019, Publix 7 pharmacies in Marietta received 9,444,880 pills, 8 or approximately 155 pills per person in Marietta. 9 A. Can you give me a page number? Sorry. 10 Q. I think it's the first page of your Cobb 11 County appendix. 12 A. The appendix is not demarcated in this 13 version. 14 Again, it's not really... it's just 15 continuous numbers, so may be the wrong report. 16 MR. ARBITBLIT: This is -- 17 THE WITNESS: 391. Okay. Maybe we can 18 just use this one. 19 All right. I'm there. 20 BY MS. KAPKE: 21 Q. Why did you use what is available on The 22 Washington Post website instead of the ARCOS data 23 as processed by plaintiffs' expert, Craig McCann? 24 MR. ARBITBLIT: Object to form. 25 THE WITNESS: Can you point me to the</p>	<p style="text-align: right;">Page 153</p> <p>1 THE WITNESS: Are you quoting from my 2 report? 3 BY MS. KAPKE: 4 Q. No, I'm not. 5 And I'll just ask, did you look at -- when 6 you pulled that information, did you look at the 7 CVS numbers or the Lacey's numbers or any other 8 numbers besides Publix? 9 A. Not that I recall. 10 Q. Do you know Publix's approximate market 11 share of opioid prescriptions dispensed in Cobb 12 County? 13 A. No. 14 Q. Do you know Publix's approximate market 15 share of prescriptions dispensed in Marietta or 16 Cobb County overall, including both opioids and 17 non-opioids? 18 A. No. 19 Q. You previously testified in your Track 3 20 deposition that (as read): 21 "Quantitatively, as I've said before, 22 per person, I believe that we need to 23 reduce prescribing back to the pre-1996 24 levels, and then qualitatively, it's 25 important that opioid prescribing be</p>

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<p style="text-align: right;">Page 154</p> <p>1 evidence-based."</p> <p>2 Have you done an analysis of what</p> <p>3 quantitatively, those numbers should look like for</p> <p>4 Cobb County specifically?</p> <p>5 A. No.</p> <p>6 Q. Do you believe that for Cobb County, you</p> <p>7 would factor in population growth at least?</p> <p>8 A. That makes sense.</p> <p>9 Q. Do you know how many individuals in Cobb</p> <p>10 County came into contact with Publix opioid-</p> <p>11 prescribing practices and policies?</p> <p>12 MR. ARBITBLIT: Object to form.</p> <p>13 THE WITNESS: I don't have a number for</p> <p>14 that, no.</p> <p>15 BY MS. KAPKE:</p> <p>16 Q. Regardless of the number of individuals,</p> <p>17 is it your opinion that Publix's opioid-</p> <p>18 prescribing practices and policies injured each</p> <p>19 and every person who came into contact with</p> <p>20 Publix's opioid-prescribing practices and</p> <p>21 policies?</p> <p>22 MR. ARBITBLIT: Object to form. Calls for</p> <p>23 a legal conclusion.</p> <p>24 THE WITNESS: No.</p> <p>25 MS. KAPKE: For the record, we'll mark the</p>	<p style="text-align: right;">Page 156</p> <p>1 Miller. I represent Defendant Albertsons, who is</p> <p>2 a defendant in the Track 9, or Tarrant County,</p> <p>3 matter. So we're going to be referring to your</p> <p>4 report as Exhibit 2 in this -- to this deposition.</p> <p>5 Okay?</p> <p>6 A. Yes.</p> <p>7 Q. Now, your report, Exhibit 2, as I</p> <p>8 understand it, has laid out all of the facts that</p> <p>9 you have determined to be relevant with respect to</p> <p>10 Albertsons. Is that fair?</p> <p>11 A. Yes.</p> <p>12 Q. And your opinions that you have expressed</p> <p>13 in this case as they relate to Albertsons are</p> <p>14 based on that recitation of facts; is that fair?</p> <p>15 A. Yes.</p> <p>16 Q. You've outlined in your list of materials</p> <p>17 considered, which is attached to your report, all</p> <p>18 of the documents and depositions you've reviewed</p> <p>19 pertaining to Albertsons; is that correct?</p> <p>20 A. Yes.</p> <p>21 Q. How did you -- how did you obtain those</p> <p>22 documents and depositions? Were they provided to</p> <p>23 you -- selected for you, or did you request</p> <p>24 specific items?</p> <p>25 A. Both.</p>
<p style="text-align: right;">Page 155</p> <p>1 invoices that you provided -- that your counsel</p> <p>2 provided to us as Lembke Exhibit 26.</p> <p>3 (Whereupon, Lembke Exhibit 26 was marked</p> <p>4 for identification.)</p> <p>5 BY MS. KAPKE:</p> <p>6 Q. Is it correct that you do not have --</p> <p>7 strike that.</p> <p>8 I'll just mark these for the record.</p> <p>9 Okay. Are those your invoices?</p> <p>10 A. Yes. They look like it.</p> <p>11 MS. KAPKE: Okay. I am going to reserve</p> <p>12 my right to ask additional questions after</p> <p>13 Gretchen goes, if there's any time left, but I</p> <p>14 will pass the baton over to Gretchen.</p> <p>15 MR. ARBITBLIT: It's now 12:13. Lunch has</p> <p>16 arrived, as far as I know. Do you want the eat?</p> <p>17 MS. KAPKE: Let's go off the record.</p> <p>18 THE VIDEOGRAPHER: We are off the record.</p> <p>19 The time is 12:14.</p> <p>20 (Lunch break taken.)</p> <p>21 THE VIDEOGRAPHER: We are back on the</p> <p>22 record. The time is 12:43.</p> <p>23 EXAMINATION BY MS. MILLER:</p> <p>24 Q. Good afternoon, Dr. Lembke. As I</p> <p>25 introduced myself earlier, my name is Gretchen</p>	<p style="text-align: right;">Page 157</p> <p>1 Q. What were the items that you specifically</p> <p>2 requested?</p> <p>3 A. Are we talking about all of the materials</p> <p>4 I reviewed or just --</p> <p>5 Q. Just specific to Albertsons.</p> <p>6 A. I don't remember.</p> <p>7 Q. Okay. Were there particular depositions</p> <p>8 that you had requested for your review?</p> <p>9 A. Probably, but I'm not recalling specific</p> <p>10 names.</p> <p>11 Q. But fair to say that all of the</p> <p>12 depositions that are listed in your materials</p> <p>13 considered are the only ones that you have</p> <p>14 reviewed?</p> <p>15 A. Yes.</p> <p>16 Q. In your report, there are a number of</p> <p>17 instances where you refer to the "pharmaceutical</p> <p>18 opioid industry."</p> <p>19 Is it fair to say that when you use that</p> <p>20 term, you are not necessarily referring to</p> <p>21 Albertsons or Publix in every instance that you</p> <p>22 have referred -- that you've used that term in</p> <p>23 your report?</p> <p>24 A. That's correct.</p> <p>25 Q. And the way that we would know when</p>

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<p style="text-align: right;">Page 158</p> <p>1 Albertsons or Publix is considered part of the 2 pharmaceutical opioid industry, as you refer to it 3 in your report, would be if there's a reference to 4 Albertsons or Publix specifically? 5 MR. ARBITBLIT: Object to form. 6 THE WITNESS: Generally speaking, that's 7 true, but I can't say that's true in every 8 situation. 9 BY MS. MILLER: 10 Q. You have -- both in your report and in 11 your prior publications and your books, you have 12 provided a pretty lengthy, thorough discussion 13 about information from manufacturers and 14 distributors who have disseminated information to 15 the healthcare community which has had significant 16 impact, as you have put it, on governmental 17 regulatory bodies, professional medical societies, 18 academic physicians, and others in the healthcare 19 industry; is that fair? 20 A. Yes. 21 Q. I'm going to turn you to page 138 of your 22 report in Exhibit 2. 23 You, in that -- on page 138, you start a 24 discussion regarding the NACDS, which you've 25 discussed already earlier today. In particular,</p>	<p style="text-align: right;">Page 160</p> <p>1 MS. MILLER: Oh, wait. Okay. I've got 2 it. Yeah, there's 29 on here, so let's mark this 3 as Exhibit 29. 4 Would you mind putting that on there? 5 Thank you. 6 MR. ARBITBLIT: "I voted." 7 Want it at the bottom? 8 MS. MILLER: Sure. 9 (Whereupon, Lembke Exhibit 29 was marked 10 for identification.) 11 BY MS. MILLER: 12 Q. Okay. Specifically referring to your 13 reference in this Practice Memo, you had 14 criticisms about some statements that are in this 15 Practice Memo. 16 And as you've noted, this one was issued 17 September of 2002. Do you see that at the top? 18 My question is: Is it your opinion that 19 pharmacies -- it was unreasonable for pharmacies 20 to rely on publications from the NACDS in 2002? 21 A. The Practice Memo from 2002 is an example 22 of the kinds of misleading messages that 23 Albertsons relied on to miseducate it pharmacists. 24 Your question, at what point did they know 25 better or should they have realized that this</p>
<p style="text-align: right;">Page 159</p> <p>1 you've noted -- or you've described a publication 2 called the Practice Memo that the NACDS 3 disseminated; correct? 4 A. Yes. 5 MS. MILLER: I'll go ahead and mark this. 6 Are we at Exhibit 26? 7 We have stickers. 8 May I borrow these? 9 MS. KAPKE: Yes, of course. Sorry. 10 MS. MILLER: Do you know where you left 11 off on exhibits? I can check. 12 MR. ARBITBLIT: We have -- 13 MR. CHALOS: 26 was the last one. 14 MS. MILLER: 26 was the last one? I have 15 24 in my pile, but I didn't get all of the 16 exhibits. 17 MS. KAPKE: I thought we marked the 18 invoices. 19 MR. ARBITBLIT: I don't recall you marking 20 them. You handed them to the witness and asked if 21 they were her invoices. I don't recall whether 22 they were marked. 23 But there was also something that you 24 marked earlier as 28, which was probably just as 25 cautionary.</p>	<p style="text-align: right;">Page 161</p> <p>1 content was not evidence-based, it's hard to put 2 an exact date, but I would certainly say not long 3 thereafter. 4 Q. Okay. So you can't identify a date where 5 you feel like it was -- or it's your opinion that 6 it was unreasonable for pharmacies to rely on 7 information from NACDS? 8 MR. ARBITBLIT: Object to form. 9 THE WITNESS: So if I were forced to put a 10 date on it, I would probably say around 2003 -- 11 well, let me -- let me rephrase that -- or let me 12 restate that. 13 In 2001, Barry Meier's Pain Killer was 14 published, which was an exposé of the 15 pharmaceutical industry, including their undue 16 influence on the medical community's perceptions 17 of risks and benefits. 18 So I think it's fair to say that by 2001, 19 Albertsons should have begun to question these 20 industry-influence messages, including what was 21 coming from NACDS. 22 And over time, they should have questioned 23 even more, as more and more evidence became 24 available. 25 BY MS. MILLER:</p>

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<p style="text-align: right;">Page 162</p> <p>1 Q. Is it your opinion that it was 2 unreasonable for pharmacies to rely on their state 3 boards of pharmacy for -- as a source of 4 information regarding controlled source 5 dispensing -- controlled substance dispensing? 6 MR. ARBITBLIT: Object to form. 7 THE WITNESS: To the extent that the state 8 board of pharmacy was propagating misleading 9 messages, yes, it was unreasonable for pharmacies 10 to rely on the state boards of pharmacy as a 11 source of information regarding controlled 12 substance dispensing. 13 BY MS. MILLER: 14 Q. And how would -- how would pharmacies know 15 that the state board of pharmacy is propagating 16 false information? 17 A. Pharmacies, according to the Controlled 18 Substance Act, have a duty to pay attention to the 19 many different sources, including news reports, 20 that would inform their opioid stewardship and 21 their understanding of red flags. 22 And by 2001, 2002, this country was 23 already seeing an explosion in the opioid supply 24 and the numbers of people getting addicted to 25 opioids and dependent on opioids and dying from</p>	<p style="text-align: right;">Page 164</p> <p>1 that person said. 2 Q. So it is your opinion that pharmacies had 3 an obligation to understand when the DEA was 4 saying something that was accurate or not; is that 5 fair? 6 A. That's fair. 7 Q. Would it have been reasonable for 8 pharmacies to look to the National Association of 9 Boards of Pharmacy for information regarding 10 controlled substance dispensing? 11 MR. ARBITBLIT: Object to form. 12 THE WITNESS: It would have been 13 reasonable for pharmacies to look toward that 14 source, the National Association of Boards of 15 Pharmacy, but not to blindly accept what that 16 organization disseminates, especially as it was 17 influenced by Purdue Pharma and others. 18 BY MS. MILLER: 19 Q. So it's your opinion that pharmacies had 20 an obligation to understand when the National 21 Association of Boards of Pharmacy was presenting 22 information supplied by Purdue or other industry 23 representatives? 24 A. That's part of my response, yes. 25 Q. And pharmacies had an obligation to</p>
<p style="text-align: right;">Page 163</p> <p>1 opioids. And those reports were coming out in the 2 news as well as, as I said earlier, some DE- -- 3 early DEA decisions and statements. 4 Q. Was -- is it your opinion that it was 5 reasonable for pharmacies to rely on the DEA as a 6 source of information regarding controlled 7 substance dispensing? 8 MR. ARBITBLIT: Object to form. 9 THE WITNESS: The information and 10 messaging from the DEA that was evidence-based was 11 appropriate to rely on. Any messaging that might 12 have come from DEA -- from the DEA or DEA 13 representatives that was not informed by the 14 evidence would have been unreasonable to rely 15 upon. 16 BY MS. MILLER: 17 Q. So, in short, it's not reasonable for 18 pharmacists to rely on the DEA as a source of 19 information regarding controlled substance 20 dispensing? 21 A. That's not exactly what I said. 22 Relying on the DEA and DEA decisions is 23 important, but if a given representative of the 24 DEA is stating something that's not accurate, it 25 would not be reasonable to blindly follow what</p>	<p style="text-align: right;">Page 165</p> <p>1 understand if the information coming from the 2 National Association of Boards of Pharmacy was 3 misleading or incorrect in any way? 4 A. Yes. 5 Q. You've expressed criticism of the 6 Federation of State Boards of -- of State Medical 7 Boards. And I can turn you to your report on page 8 78, if you wish. 9 You have outlined that the -- I'm going to 10 refer to it as the FSMB, if you don't mind, for 11 short -- that the FSMB issued guidelines on the 12 use of controlled substances for pain management 13 in 1998, which later was -- became the model 14 policy on the use of controlled substances for 15 pain management in 2004. 16 Do you see that? 17 A. Yes. 18 Q. Do you have specific criticisms about 19 those guidelines? 20 A. I have lots of criticisms of those 21 guidelines. I detail them in the report. 22 Q. Substantively, what are -- what are your 23 criticisms of those guidelines? I see references 24 in here that there was -- they were developed with 25 funding from the industry. But substantively, do</p>

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<p style="text-align: right;">Page 166</p> <p>1 you have any disagreements with those guidelines?</p> <p>2 MR. ARBITBLIT: Object to form.</p> <p>3 THE WITNESS: You'll have to give me a</p> <p>4 moment to re-read this section of my report.</p> <p>5 BY MS. MILLER:</p> <p>6 Q. Okay.</p> <p>7 A. Is Appendix II included in this?</p> <p>8 Q. I don't know.</p> <p>9 A. I think it is.</p> <p>10 Q. I have it on page 408.</p> <p>11 A. Do you have the guideline itself?</p> <p>12 Q. I don't. I just -- you have -- I'm just</p> <p>13 going based on your report at the moment.</p> <p>14 A. Okay.</p> <p>15 Q. Actually, I probably do have the</p> <p>16 guideline, but I don't want to take time to go</p> <p>17 through the entire guideline.</p> <p>18 A. Okay.</p> <p>19 Q. I just want to know from you. You have</p> <p>20 noted that the FSMB received funding from the</p> <p>21 pharmaceutical industry, and you have stated that</p> <p>22 if they are -- you have considered them part of</p> <p>23 the cause of the opioid misinformation.</p> <p>24 I'm trying to drill down to -- as to what</p> <p>25 that was. If you don't have that readily</p>	<p style="text-align: right;">Page 168</p> <p>1 misleading messages described herein and thereby</p> <p>2 contributed to the overprescribing and</p> <p>3 overdispensing of opioids that created opioid</p> <p>4 epidemic.</p> <p>5 Q. So is it your opinion that pharmacies had</p> <p>6 an obligation to understand that opioid</p> <p>7 manufacturers contributed to the development of</p> <p>8 the FSMB guidelines?</p> <p>9 A. Yes, and also to appreciate that the</p> <p>10 guidelines were not evidence-based. So even</p> <p>11 separate from the inherent bias due to the</p> <p>12 industry, appreciating that the messaging in</p> <p>13 guidelines was essentially thinly veiled marketing</p> <p>14 and not evidence-based.</p> <p>15 Q. Was it reasonable for pharmacies to rely</p> <p>16 on the FDA as a source of information regarding</p> <p>17 controlled substances?</p> <p>18 A. Yes, to the extent that the information</p> <p>19 from the FDA was accurate and evidence-based.</p> <p>20 Q. And is it your opinion that pharmacies had</p> <p>21 an obligation to understand what information</p> <p>22 coming from the FDA was evidence-based and</p> <p>23 accurate?</p> <p>24 A. Yes.</p> <p>25 Q. Going to ask you a few questions about</p>
<p style="text-align: right;">Page 167</p> <p>1 available or if it's all stated in your report and</p> <p>2 there's nothing further, then...</p> <p>3 A. It's stated in my report, and there's</p> <p>4 nothing further, so that's why I'm hesitating a</p> <p>5 bit. I could go through and enumerate and</p> <p>6 essentially reflect back to you what is on my</p> <p>7 report on page 78 --</p> <p>8 Q. Okay.</p> <p>9 A. -- 79 --</p> <p>10 Q. That's not necessary.</p> <p>11 A. Yeah.</p> <p>12 Q. I just want to confirm that that's --</p> <p>13 everything is in your report.</p> <p>14 A. Yes. And also Appendix II, which also</p> <p>15 refers to the individuals behind that report.</p> <p>16 Q. Okay. So in your opinion, was it not</p> <p>17 reasonable for pharmacies to rely on information</p> <p>18 from the FSMB back in 1998 and 2004, when these</p> <p>19 guidelines came out?</p> <p>20 A. That's correct.</p> <p>21 Q. And why would it not have been reasonable</p> <p>22 for pharmacies to rely on it at that time?</p> <p>23 A. As I say in the report, those guidelines</p> <p>24 were clearly influenced by the opioid</p> <p>25 pharmaceutical industry and included many of the</p>	<p style="text-align: right;">Page 169</p> <p>1 Albert- -- your opinions on Albertsons</p> <p>2 specifically.</p> <p>3 I'll turn you to page 103 of your report.</p> <p>4 You were asked some questions earlier as</p> <p>5 well about the Butrans stock and save program,</p> <p>6 which is under Section A on page 103.</p> <p>7 Do you have an understanding as to how</p> <p>8 that program worked, how it operated?</p> <p>9 A. My understanding is, as stated here in the</p> <p>10 report, that Albertsons (as read):</p> <p>11 "received payments for participation</p> <p>12 in Purdue's Butrans stock and save</p> <p>13 program, including \$8,268 paid to</p> <p>14 Albertsons for claims from multiple Sav-On</p> <p>15 pharmacy locations in Ft. Worth and</p> <p>16 Arlington, Texas."</p> <p>17 Q. But outside of that, did you understand</p> <p>18 how the logistics of that program worked?</p> <p>19 MR. ARBITBLIT: Object to form.</p> <p>20 THE WITNESS: What do you mean by</p> <p>21 "logistics"?</p> <p>22 BY MS. MILLER:</p> <p>23 Q. How did -- how did Albertsons earn the</p> <p>24 \$8,000-plus payment that you've referenced here?</p> <p>25 A. I'm not sure.</p>

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<p style="text-align: right;">Page 170</p> <p>1 Q. Are you aware that no pharmacists were --</p> <p>2 had knowledge of this program?</p> <p>3 MR. ARBITBLIT: Object to form.</p> <p>4 THE WITNESS: I'm not aware of that one</p> <p>5 way or another.</p> <p>6 BY MS. MILLER:</p> <p>7 Q. Would it change your opinion to learn that</p> <p>8 the pharmacists at Albertsons would not have been</p> <p>9 aware of this program?</p> <p>10 A. It wouldn't change my opinion, no.</p> <p>11 Q. Would it change your opinion to learn that</p> <p>12 Albertsons made no changes to its ordering of</p> <p>13 Butrans as a result of this program?</p> <p>14 MR. ARBITBLIT: Object to form.</p> <p>15 THE WITNESS: That wouldn't change my</p> <p>16 opinion, no.</p> <p>17 BY MS. MILLER:</p> <p>18 Q. Okay. And you're not aware, actually, as</p> <p>19 of whether Albertsons ordered any additional</p> <p>20 product as a result of this program that it</p> <p>21 otherwise would have ordered?</p> <p>22 A. To me, that's not really important.</p> <p>23 What's important is that they made opioids cheaper</p> <p>24 for patient consumers, thereby --</p> <p>25 Q. Do you know that that was -- that it was</p>	<p style="text-align: right;">Page 172</p> <p>1 -- "for 80 milligrams OxyContin</p> <p>2 tablets to provide customers with a</p> <p>3 significant cost savings."</p> <p>4 So I had understood that this line of</p> <p>5 questioning referred to Section A, which includes</p> <p>6 at the top a rebate program for 80 milligrams of</p> <p>7 OxyContin.</p> <p>8 BY MS. MILLER:</p> <p>9 Q. Okay. Well, I'll just direct you. So</p> <p>10 that first sentence of Section A does not refer to</p> <p>11 Albertsons.</p> <p>12 A. Okay.</p> <p>13 Q. Do you see that?</p> <p>14 It's the second sentence, refers to</p> <p>15 Albertsons, which is a Butrans stock and save</p> <p>16 program.</p> <p>17 Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. I'll represent to you that I'm not aware</p> <p>20 of any reference that Albertsons participated in</p> <p>21 this first program, so my questions are just</p> <p>22 limited to the second program.</p> <p>23 So, again, just to be clear, your opinion</p> <p>24 is based on an assumption that this stock and save</p> <p>25 program resulted in cheaper prescriptions to</p>
<p style="text-align: right;">Page 171</p> <p>1 made cheaper for the patients as a result of this</p> <p>2 program?</p> <p>3 A. Well, that's my understanding of what a</p> <p>4 rebate program is.</p> <p>5 Q. Okay. And then that's the basis for your</p> <p>6 opinion that Albertsons -- that this program had</p> <p>7 an impact on prescriptions to patients?</p> <p>8 A. The main basis for my opinion was that</p> <p>9 Alberts (sic) took money from Purdue, showing a</p> <p>10 pattern of collaboration, as a way to promote</p> <p>11 OxyContin. That's the basis of my opinion.</p> <p>12 Q. Okay. And that opinion is based on an</p> <p>13 assumption that -- actually, we're talking about</p> <p>14 Butrans right now.</p> <p>15 A. Oh, I thought we were talking about the</p> <p>16 rebate stock and save program.</p> <p>17 Q. Right. Stock and save program under</p> <p>18 Section A --</p> <p>19 A. Yeah.</p> <p>20 Q. -- is for Butrans.</p> <p>21 Do you see that?</p> <p>22 A. (As read):</p> <p>23 "...rebate program" --</p> <p>24 MR. ARBITBLIT: Misleading.</p> <p>25 THE WITNESS: (As read):</p>	<p style="text-align: right;">Page 173</p> <p>1 patients; is that correct?</p> <p>2 A. Let me clarify that. My assumption is</p> <p>3 that Purdue's Butrans stock and save program</p> <p>4 resulted in \$8,268 being paid to Albertsons for</p> <p>5 claims on that stock and save program for Butrans.</p> <p>6 That's my understanding.</p> <p>7 Q. And my question is, how would Albertsons</p> <p>8 receiving \$8,000 -- \$8,268 for -- pursuant to the</p> <p>9 stock and save program have had an impact on</p> <p>10 opioid dispensing in Tarrant County, Texas?</p> <p>11 A. I can infer from this that Purdue promoted</p> <p>12 Butrans to Albertsons through this program, which,</p> <p>13 in turn, might have led some pharmacists to</p> <p>14 recommend Butrans or some customers to ask for</p> <p>15 Butrans.</p> <p>16 Q. So if pharmacists were not aware of this</p> <p>17 program, would you agree that this would not have</p> <p>18 caused them to recommend Butrans to any patients?</p> <p>19 A. Not necessarily. Patient consumers and</p> <p>20 even prescribers are price-sensitive, and if</p> <p>21 either the prescriber or the patient consumer was</p> <p>22 aware that Butrans was less expensive than another</p> <p>23 comparable product, that might have driven them to</p> <p>24 either prescribe that product or request that</p> <p>25 product.</p>

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<p style="text-align: right;">Page 174</p> <p>1 Q. So, again, that opinion is based on an 2 assumption that this program made the product less 3 expensive for the consumer? 4 A. Yes. 5 Q. If that -- if it were shown that that, in 6 fact, did not make the product less expensive for 7 the consumer, would that change your opinion? 8 A. Not necessarily. I would want to have a 9 better understanding of why Purdue paid Albertsons 10 8,000-plus dollars. 11 And, again, this is all sort of in 12 recognition of a pattern of for-profit 13 collaboration between Albertsons and Purdue. In 14 isolation, it's just one more sort of -- I don't 15 want to say nail in the coffin, but that's what 16 comes to mind now, one more piece of evidence of 17 collaboration with Purdue. 18 Q. Okay. So then the next is a reference to 19 the OxyContin -- Section B, OxyContin coupon and 20 savings card. Do you have any understanding as to 21 how that program worked? 22 A. My understanding is that OxyContin coupons 23 and saving cards made it possible for patients to 24 obtain OxyContin for less money than they would 25 have without the card or the savings program.</p>	<p style="text-align: right;">Page 176</p> <p>1 promotion. Your opinion's about the promotion of 2 opioids; correct? You have expressed opinions 3 that Albertsons helped promote opioids; right? 4 MR. ARBITBLIT: Object to form. 5 THE WITNESS: My opinion is that 6 Albertsons contributed to the opioid oversupply, 7 which caused a public nuisance. And part of that 8 contribution is the use of coupons and savings 9 cards that made opioids cheaper, that made it more 10 possible for people to obtain them. 11 So the promotion is part of it and the 12 general oversupply piece is another related part 13 of it. 14 BY MS. MILLER: 15 Q. You've referenced in Section E on page 103 16 Albertsons participated in Purdue's free trial 17 card offer for Hysingla ER. Do you have any 18 understanding as to how that program worked? 19 A. My understanding is that with a free trial 20 card offer for Hysingla, a patient consumer at an 21 Albertsons would get Hysingla for less money or, 22 possibly, no money. 23 Q. Were you aware that these cards were only 24 eligible for prescriptions that were paid for by 25 insurance?</p>
<p style="text-align: right;">Page 175</p> <p>1 Q. And do you have any knowledge of any 2 Albertsons pharmacist recommending OxyContin to 3 any patient as a result of this program? 4 MR. ARBITBLIT: Object to form. 5 THE WITNESS: My knowledge of how coupon 6 programs work for opioids is that when they're 7 available in a chain pharmacy, it's a national 8 policy, and that it's common for pharmacists to 9 pull those out as a way to save money for their 10 patient customers or for patients to somehow 11 obtain them to use them to get cheaper drugs. 12 BY MS. MILLER: 13 Q. Do you have any knowledge or understanding 14 that these cards were disseminated by Albertsons? 15 A. Well, they were redeemed at Albertsons 16 pharmacies. 17 Q. Correct. So you don't have any knowledge 18 or information that these were given to anybody by 19 Albertsons? 20 MR. ARBITBLIT: Object to form. 21 THE WITNESS: I'm not sure it's important. 22 The key is that these cards could be redeemed at 23 an Albertsons. 24 BY MS. MILLER: 25 Q. Well, I think it is important to the</p>	<p style="text-align: right;">Page 177</p> <p>1 A. No. 2 Q. Would that change your opinion in any way? 3 A. No. 4 Q. Do you have any knowledge or information 5 that suggests that Albertsons dispensed more 6 prescriptions pursuant -- dispensed more opioids 7 pursuant to prescriptions as a result of these 8 programs that we've mentioned? 9 MR. ARBITBLIT: Object to form. 10 THE WITNESS: I think there's good 11 evidence that more illegitimate prescriptions for 12 opioids were dispensed as a result of these 13 coupons and savings programs, and I don't think 14 that Albertsons would be an exception to that. 15 BY MS. MILLER: 16 Q. You have a discussion about discount cards 17 with respect to Albertsons. And can you tell me 18 what your understanding is of a discount card in 19 the context of this discussion? 20 A. A discount card is something that allows a 21 patient consumer to obtain a given product for 22 less money than they would without the discount 23 card. 24 Q. And so GoodRx would be an example? 25 A. I think so, yes.</p>

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<p style="text-align: right;">Page 178</p> <p>1 Q. And is your understanding that those 2 discount cards such as GoodRx apply to all kinds 3 of prescriptions, not just opioids? 4 A. I'm not sure. 5 Q. Do you have any understanding as to how 6 the contracts that pharmacies have for discount 7 cards work? 8 A. Not specifically, no. 9 Q. Do you have any idea who Albertsons 10 contracted with to obtain these discount cards? 11 A. I think it varied. Sometimes they 12 contracted with the manufacturer whose product the 13 discount cards pertain to. Sometimes they 14 contracted with the distributor, like McKesson. 15 So I think it varied. 16 Q. Do you have that knowledge with respect to 17 Albertsons? 18 A. No. 19 Q. You've expressed an opinion as to why 20 Albertsons did not refuse to honor discount cards 21 for opioids. Do you recall that in your report? 22 A. Yes. 23 Q. If the evidence were to show that 24 Albertsons' contracts required them to honor 25 discount cards for all prescriptions and not</p>	<p style="text-align: right;">Page 180</p> <p>1 legitimate for opioids should not be allowed to 2 use a discount card to fill that prescription? 3 A. Yes. 4 Q. Do you consider opioids as an essential 5 medication for certain patients? 6 A. Yes. 7 Q. And so for those patients for whom opioids 8 are an essential medication, do you hold the 9 opinion that they should not be entitled to use a 10 discount card? 11 MR. ARBITBLIT: Object to form. 12 THE WITNESS: I mean, essentially, yes. 13 But the evidence is strongly against the 14 use of opioids for most patients for chronic pain, 15 and there's a growing body of evidence that even 16 for acute pain, opioids are not the best choice. 17 Most patients who are using discount cards 18 are ambulatory outpatients, not inpatients, where 19 there are more indications for the use of opioid 20 as an essential tool. For inpatients, these 21 discount cards would not be relevant anyway. 22 BY MS. MILLER: 23 Q. I'm going to turn you to page 140 of your 24 report, referencing NACDS. 25 You have outlined a discussion that</p>
<p style="text-align: right;">Page 179</p> <p>1 exclude opioids, would that change your opinion 2 about Albertsons -- 3 MR. ARBITBLIT: Object to form. 4 BY MS. MILLER: 5 Q. -- in this report? 6 A. Probably not. 7 Q. Okay. And why not? 8 A. Even given that reality, Albertsons could 9 have and should have been more proactive in 10 changing whatever their contract was in order to 11 exclude opioids from their coupons and discount 12 card programs, as -- as other pharmacies did. 13 Q. But that's based on an assumption that 14 Albertsons had that negotiating power with the 15 companies it was negotiating with; correct? 16 MR. ARBITBLIT: Object to form. 17 THE WITNESS: I'm not sure. 18 BY MS. MILLER: 19 Q. In general, you believe that discount 20 cards such as GoodRx should not -- should never be 21 used with opioids; am I understanding that 22 correctly? 23 A. Yes. 24 Q. And so it's your opinion that patients 25 without insurance who have prescriptions that are</p>	<p style="text-align: right;">Page 181</p> <p>1 Albertsons participated with NACDS to lobby to 2 delay a mandate to require mandatory checking of 3 the PDMP for all opioid prescriptions; correct? 4 A. Yes. 5 Q. And that's specific to requiring it for 6 all opioid prescriptions, not just those subject 7 to red flags; correct? 8 A. Yes. 9 Q. Am I correct that you do not outline any 10 other type of lobbying activity that Albertsons 11 participated in with NACDS? 12 A. That's correct. 13 Q. Are you aware of any other organizations 14 that did not support mandatory checking of PDMP 15 for all opioid prescriptions? 16 A. NACDS. 17 Q. Outside of NACDS. Are you aware of any 18 other organizations that did not support that 19 mandate? 20 A. I'm not aware of any, but it wouldn't 21 surprise me if it was a long list. 22 Q. You've expressed some opinions regarding 23 the amount of time that it takes for pharmacists 24 to fill scripts and mandate -- or metrics 25 pertaining to that that certain pharmacies have</p>

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<p style="text-align: right;">Page 182</p> <p>1 implemented.</p> <p>2 I'm going to turn you to -- actually, I</p> <p>3 don't believe you've expressed any opinions as</p> <p>4 to -- specific as to any metrics that Albertsons</p> <p>5 promulgated for their pharmacists. Correct?</p> <p>6 MR. ARBITBLIT: Object to form.</p> <p>7 THE WITNESS: Well, I have opinions about</p> <p>8 that, but I'm not recalling if those opinions are</p> <p>9 detailed in this report.</p> <p>10 BY MS. MILLER:</p> <p>11 Q. Okay.</p> <p>12 A. Except -- I'm sorry. I'm probably</p> <p>13 forgetting. Let me look for a moment at the</p> <p>14 case-specific appendix.</p> <p>15 Q. Okay. I can refer you to -- page 230 and</p> <p>16 231 is the only place where I see you talk about</p> <p>17 pharmacy scripts as it relates to Albertsons --</p> <p>18 A. Right.</p> <p>19 Q. -- metrics for times for scripts.</p> <p>20 A. Uh-huh.</p> <p>21 Q. My question is a little more specific.</p> <p>22 Do you have any opinions that Albertsons</p> <p>23 presented any metrics for filling scripts to its</p> <p>24 pharmacists?</p> <p>25 A. Can you describe what you mean by</p>	<p style="text-align: right;">Page 184</p> <p>1 THE WITNESS: I don't think I gave the</p> <p>2 opinion that a certain number of scripts per hour</p> <p>3 is too many.</p> <p>4 My opinion is, more broadly, on the time</p> <p>5 pressure on pharmacists, with lack of</p> <p>6 prioritization of their available time for</p> <p>7 investigating red flags and other due diligence</p> <p>8 pertaining to their corresponding responsibility.</p> <p>9 BY MS. MILLER:</p> <p>10 Q. Okay. You have not expressed those types</p> <p>11 of opinions as to Albertsons with respect to the</p> <p>12 amount of time; correct?</p> <p>13 MR. ARBITBLIT: Object to form. Vague.</p> <p>14 THE WITNESS: Well, I have expressed an</p> <p>15 opinion on page 231, where I talk about how an</p> <p>16 Albertsons' slide showed that part of their</p> <p>17 corporate opportunity included reducing pharmacist</p> <p>18 hours.</p> <p>19 Also, in the deposition by Jessica Covaci,</p> <p>20 there was affirmation that, quote/unquote, script</p> <p>21 growth was a key to Albertsons' success, as well</p> <p>22 as descriptions by Jessica Covaci about pharmacy</p> <p>23 hours, working 12 hours, often without another</p> <p>24 pharmacist there, with a system that made it very</p> <p>25 difficult for them to track trends or know really</p>
<p style="text-align: right;">Page 183</p> <p>1 "metrics"?</p> <p>2 Q. Any requirements of how many scripts to</p> <p>3 fill per time period.</p> <p>4 A. Not to my knowledge, no.</p> <p>5 Q. Outside of what you have written in your</p> <p>6 report, do you have any other information or</p> <p>7 evidence that you have based your opinions on that</p> <p>8 suggest Albertsons put pressure on its pharmacists</p> <p>9 with respect to filling scripts per a certain</p> <p>10 amount of time?</p> <p>11 A. No.</p> <p>12 Q. You referenced an article -- some articles</p> <p>13 regarding chain stores generally, about filling</p> <p>14 scripts and a certain number of scripts per hour,</p> <p>15 suggesting that those are unreasonable. What is a</p> <p>16 reasonable amount of time per scripts for a</p> <p>17 pharmacy to have?</p> <p>18 MR. ARBITBLIT: Object to form.</p> <p>19 THE WITNESS: It would really depend on</p> <p>20 the prescription.</p> <p>21 BY MS. MILLER:</p> <p>22 Q. So if it depends on the prescription, how</p> <p>23 can you have an opinion that a certain number of</p> <p>24 scripts per hour is too many?</p> <p>25 MR. ARBITBLIT: Object to form.</p>	<p style="text-align: right;">Page 185</p> <p>1 what was happening vis-à-vis these types of red</p> <p>2 flag encounters.</p> <p>3 BY MS. MILLER:</p> <p>4 Q. You reference a slide that talks about</p> <p>5 script growth being a goal, but do you know what</p> <p>6 the starting point was from that discussion, where</p> <p>7 they were in terms of how many scripts on average</p> <p>8 were being filled per hour?</p> <p>9 A. No.</p> <p>10 Q. Would it matter to know that number --</p> <p>11 A. Probably.</p> <p>12 Q. -- to your opinions?</p> <p>13 (Whereupon, Lembke Exhibit 30 was marked</p> <p>14 for identification.)</p> <p>15 BY MS. MILLER:</p> <p>16 Q. Okay. I'm going to hand you Exhibit 30.</p> <p>17 This is -- I'll represent to you is an excerpt</p> <p>18 from the presentation that you have referenced on</p> <p>19 this page. I have the whole thing, but it's quite</p> <p>20 lengthy, and there's -- really, only this page</p> <p>21 refers to the question.</p> <p>22 MR. ARBITBLIT: I think you should mark</p> <p>23 the whole thing, lengthy or not.</p> <p>24 MS. MILLER: You want this Exhibit 31?</p> <p>25 MR. ARBITBLIT: I've changed my mind.</p>

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<p style="text-align: right;">Page 186</p> <p>1 MS. MILLER: You're welcome to look 2 through it, if you like. 3 MR. ARBITBLIT: Just kidding, Ms. Miller. 4 MS. MILLER: Do you want to mark it? 5 MR. ARBITBLIT: Yeah. 6 MS. MILLER: Okay. 7 (Whereupon, Lembke Exhibit 31 was marked 8 for identification.) 9 BY MS. MILLER: 10 Q. Okay. Looking on Exhibit 30, which I'll 11 represent to you is an excerpt from Exhibit 31, do 12 you see the reference to "Average Scripts Per 13 Hour"? 14 A. Yes, I do. 15 Q. All right. And the average represented in 16 this document is less than five scripts per hour. 17 Do you see that? 18 A. Uh-huh. 19 Q. So that comes to about 12 minutes per 20 script. 21 A. Uh-huh. 22 Q. I imagine you don't expect to -- you don't 23 opine that that is too little time for 24 pharmacists, do you? 25 A. I think --</p>	<p style="text-align: right;">Page 188</p> <p>1 making changes to its controlled substance 2 training, and you have expressed opinions in your 3 report that Albertsons did not do controlled 4 substance training prior to this time period in 5 2018. 6 My question for you is: Do you have an 7 understanding as to what the training consisted of 8 at Albertsons regarding red flags? 9 A. My sense, in the reading of these 10 documents, is that there was little training as 11 regards to red flags prior to this time period. 12 Q. What -- what -- do you have understanding 13 as to what training Albertsons did offer? 14 MR. ARBITBLIT: Object to form. 15 THE WITNESS: My understanding is that 16 Albertsons offered very little training. 17 BY MS. MILLER: 18 Q. And how do you know that? 19 A. I base that on the testimony of Tony 20 Provenzano, on the testimony of Jessica Covaci, on 21 the fact that it wasn't until 2016 that Albertsons 22 included red flags in its policies and procedures; 23 it wasn't until 2018 or so that it mandated any 24 kind of due diligence around red flags. 25 Q. Are you aware of any studies that show</p>
<p style="text-align: right;">Page 187</p> <p>1 MR. ARBITBLIT: Object to form. 2 THE WITNESS: I think this is insufficient 3 data for me to draw any conclusion. You could 4 have a 12-hour shift in which within two hours, 5 you're processing the bulk of the prescriptions, 6 and the rest of the day, you have almost nothing. 7 So it's important to have more data on, you know, 8 what hours are being -- what is actually included 9 in that calculation. 10 BY MS. MILLER: 11 Q. All right. And am I correct that you have 12 not offered any opinions regarding Albertsons -- 13 any bonus structure at Albertsons? 14 A. Honestly, I would have to go through the 15 Albertsons sections. I'm not remembering. 16 Q. Okay. If it's not in your report, you 17 don't hold an opinion about it; is that fair? 18 A. That's fair. 19 Q. You've expressed opinions that -- 20 regarding Albertsons' training. I'm going to turn 21 you to page 226 of your report. 22 Actually, I take that back. 231 of your 23 report. 24 You have referenced testimony from Tony 25 Provenzano that Albertsons -- about Albertsons</p>	<p style="text-align: right;">Page 189</p> <p>1 that training pharmacists on red flags is more or 2 less effective than having information about red 3 flags in a policy manual? 4 MR. ARBITBLIT: Object to form. 5 THE WITNESS: When do you mean by 6 "studies"? 7 BY MS. MILLER: 8 Q. Are you referring to anything to suggest 9 that -- that it's not -- it's less effective to 10 have red flags listed in a policy as opposed to 11 training your pharmacists on red flags? 12 MR. ARBITBLIT: Object to form. 13 THE WITNESS: I mean, I think it's common 14 sense that you would have to both list it in your 15 policy and train people on it to make sure they're 16 aware of the policy, reading the policy, and 17 incorporating the guidelines within the policy 18 into everyday practice. 19 BY MS. MILLER: 20 Q. And that can't be done by training on red 21 flags alone, in your opinion; correct? 22 A. I mean, that's a hypothetical. 23 You know, in general, policies are 24 important, as testified by Jessica Covaci, because 25 they also allow for the corporation to have</p>

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<p style="text-align: right;">Page 190</p> <p>1 consequences and mandatory retraining for those 2 who are not following the policy. If it's not in 3 the policy, they feel -- then they have little 4 recourse for holding the pharmacist responsible 5 for knowing it. 6 So neither one is sufficient alone. 7 Q. I'm going to change a little bit direction 8 and ask you some questions generally. 9 You've expressed the opinion that the use 10 of prescription opioids has caused the subsequent 11 heroin and fentanyl crises; correct? 12 A. Not just the use of prescription opioids. 13 The prescription opioid oversupply. 14 Q. My first question for you has to do with 15 that statement of oversupply. How would one go 16 about defining what oversupply is? 17 A. The increase in opioid prescribing and 18 dispensing from the late 1990s to the peak in 19 approximately 2012. 20 Q. But how would one quantify what is an 21 oversupply of prescription opioids? 22 MR. ARBITBLIT: Object to form. 23 THE WITNESS: The fact that the fourfold 24 increase in opioid prescribing directly correlates 25 with the fourfold increase in opioid addiction and</p>	<p style="text-align: right;">Page 192</p> <p>1 and increased prescribing. 2 I don't think it's possible to say, "When 3 it's this much above what this baseline was, then 4 we have harms." 5 This was, obviously, a gradual phenomenon. 6 In some ways, you could argue not that gradual, 7 but it was an increase that caused widespread 8 population harm, again, as measured by the 9 corresponding increase in metrics around those 10 harms. 11 BY MS. MILLER: 12 Q. You've expressed the opinion that the 13 gateway hypothesis is an explanation for a causal 14 connection between prescription opioids and harm; 15 correct? 16 MR. ARBITBLIT: Object to form. 17 BY MS. MILLER: 18 Q. Is that correct? 19 MR. ARBITBLIT: Object to form. 20 THE WITNESS: The gateway hypothesis 21 specifically describes individuals who began with 22 an opioid prescription; became addicted to, 23 dependent on, or misused that opioid; and then 24 moved from prescription opioids to illicit 25 sources.</p>
<p style="text-align: right;">Page 191</p> <p>1 opioid overdose deaths is a very strong indicator 2 that the oversupply, the fourfold increase in a 3 short period of time, across the nation led to 4 widespread harms. 5 BY MS. MILLER: 6 Q. But you haven't relied on any more 7 specific metrics other than to look at the 8 increase in prescription opioids and increase in 9 overdose deaths; correct? 10 MR. ARBITBLIT: Object to form. 11 THE WITNESS: What do you mean by "more 12 specific metrics"? What would be -- 13 BY MS. MILLER: 14 Q. If I were to try and figure out what -- at 15 what point was there oversupply, when did we get 16 to oversupply, how would -- how could someone go 17 about doing that, other than just a general 18 assessment of there was an increase in overdose 19 deaths? 20 MR. ARBITBLIT: Object to form. 21 THE WITNESS: I think the definition of 22 "epidemic" is a good place to start. An epidemic 23 is a sudden increase in harms in a population over 24 a discrete period of time, and that's what we saw 25 with opioids as a result of increased dispensing</p>	<p style="text-align: right;">Page 193</p> <p>1 BY MS. MILLER: 2 Q. Do you agree with me, though, that there 3 are other factors that could have caused -- or 4 that did cause and attributed to people moving 5 from prescription drug use to illicit drug use? 6 A. Other factors... 7 Q. Such as genetic, developmental, and 8 environmental factors. 9 A. So those are factors that address risks 10 for addiction, and included in environmental 11 factors is access, including access to opioids 12 directly or indirectly through a doctor's 13 prescription. 14 Q. And that would also include ease of access 15 to illicit opioids such as heroin and fentanyl; 16 correct? 17 A. Yes. 18 Q. Are you familiar with the common liability 19 of addiction theory, or also referred to as common 20 vulnerability? 21 A. I have not heard that specific term, no. 22 Q. You have not heard of common liability of 23 addiction theory? 24 A. No. Maybe under a different language. 25 Q. Have you heard of common vulnerability?</p>

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<p style="text-align: right;">Page 194</p> <p>1 A. Is that referring to genetic 2 vulnerability? 3 Q. It's that drug use is part of a general 4 repertoire of risky behavior. 5 MR. ARBITBLIT: Object to form. 6 THE WITNESS: I guess I'd like to see a 7 description of it written by somebody who's put 8 that out there. I could respond better to your 9 question. 10 BY MS. MILLER: 11 Q. Okay. That's fine. Fair enough. 12 I wanted to ask you a few questions going 13 back to pharmacy information systems. 14 I understand you have, you know, expressed 15 that you are not an expert in the systems itself, 16 correct, of the development of those systems 17 itself; correct? 18 A. Which systems are you talking about? 19 Q. The pharmacy information systems. So the 20 operating systems that pharmacies work on. 21 A. That's correct. 22 Q. Are you aware of what products are 23 available on the market for pharmacy information 24 systems? 25 A. I have read about some of those systems.</p>	<p style="text-align: right;">Page 196</p> <p>1 fair to say if you had an understanding of that, 2 you would have included that in your report? 3 A. Yes. 4 Q. You were asked some questions about 5 Exhibit 7 earlier, which was an article from the 6 Pharmacy Times. It should be in that stack. 7 A. No, no. It's behind here. 8 Q. Oh, okay. 9 A. Yeah. 10 Q. You cited to the Pharmacy Times -- and I 11 don't know if you need the article or not. But 12 just generally, you cited to this article in the 13 Pharmacy Times in your report. 14 My question is: Do you consider the 15 Pharmacy Times a reasonable resource upon which 16 pharmacies could have looked to for information 17 about controlled substance dispensing? 18 MR. ARBITBLIT: Object to form. 19 THE WITNESS: It would have depended. 20 BY MS. MILLER: 21 Q. And that would be the same answer as 22 previously, that pharmacies -- it's your opinion 23 that pharmacies had an obligation to understand 24 what information being published by Pharmacy Times 25 was accurate or inaccurate?</p>
<p style="text-align: right;">Page 195</p> <p>1 Q. Okay. Are you aware that many pharmacies 2 purchase those systems from other companies? 3 A. Yes, I have read that. 4 Q. Do you have any knowledge as to what 5 products were available in 2006? 6 A. No. 7 Q. Do you have any knowledge as to what 8 information system Albertsons has used? 9 A. Not that I am recalling right now. 10 Q. Do you have any information as to what 11 features were available in the pharmacy systems 12 that Albertsons has used? 13 A. No. 14 Q. Do you have any knowledge regarding how 15 Albertsons uses its dispensing data in its 16 compliance programs? 17 A. It has changed over time is my 18 understanding. 19 Q. I'd just -- if it's -- to the extent you 20 have any understanding, would it be included in 21 your report? 22 A. Yes, it would. 23 Q. And the same question with respect to what 24 pop-ups are available on a pharmacist's screen 25 when it fills a prescription at Albertsons; is it</p>	<p style="text-align: right;">Page 197</p> <p>1 A. Pharmacies would have an obligation to 2 know the evidence base, including decades of 3 knowledge about the addictive nature of opioids 4 and the need to use them at low doses, short term, 5 and to exercise their corresponding 6 responsibility. 7 That was not new information. It was not 8 new information in the early aughts, in the 1990s, 9 in the 1980s, in the 1970s. That was well-known 10 for many decades. 11 Q. In your prior answer about other entities 12 or individuals who you considered had some degree 13 for responsibility for contributing to the opioid 14 crisis, you were asked about doctors, and you 15 qualified your answer by saying that the medical 16 profession -- you did place some fault because 17 they were miseducated and misinformed; right? 18 Correct? 19 A. Yes. 20 Q. How are pharmacists different? 21 A. Pharmacists, I believe, were also largely 22 miseducated and misinformed, but pharmacies and 23 corporate leadership were not. 24 Q. How can you come to that conclusion? 25 A. Because of the fact that corporate</p>

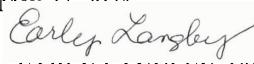
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<p style="text-align: right;">Page 198</p> <p>1 leadership was well aware of the DEA judgments and 2 yet did not do what was in their power to give 3 pharmacists the training, time, infrastructure, 4 resources, or incentives to be able to exercise 5 their good judgment and their corresponding 6 responsibility. 7 I can stop there. 8 Q. You earlier were asked whether you had any 9 evidence that Publix authored, funded any articles 10 about opioids. I wanted to ask you the same 11 question about Albertsons. 12 If -- if you haven't referenced it in your 13 report, are you aware of any evidence that 14 Albertsons authored or funded or supported any 15 articles regarding opioids? 16 A. Only what's referenced in my report. 17 Q. Okay. And you do not reference in your 18 report any CE programs that Albertsons 19 participated in with Purdue; correct? 20 A. Give me a moment. 21 Q. Well, I can -- again, I'll just ask it the 22 same way. 23 If it's not in your report, would it be 24 correct that you don't have an opinion regarding 25 it?</p>	<p style="text-align: right;">Page 200</p> <p>1 that you don't have to label something as a red 2 flag for the concept to be understood? 3 MR. ARBITBLIT: Objection to the -- 4 BY MS. MILLER: 5 Q. Correct? 6 MR. ARBITBLIT: -- misleading prelude. 7 If you understand the question, you can 8 answer it. 9 THE WITNESS: Can you ask the question 10 again. 11 BY MS. MILLER: 12 Q. Yeah. 13 Just because it's labeled as a red flag -- 14 well, let me back up. 15 "Red flag" is a term that's been developed 16 to reference suspicious circumstances surrounding 17 a prescription; is that fair? 18 A. Yes. 19 Q. There's nothing magic about the term "red 20 flag," is there? 21 MR. ARBITBLIT: Object to form. 22 THE WITNESS: I agree that you could use a 23 different term, but the commonly accepted term in 24 the field -- in the medical field is "red flag." 25 BY MS. MILLER:</p>
<p style="text-align: right;">Page 199</p> <p>1 I will -- I will represent to you that 2 there is no reference to it in your report. And 3 if you -- you can give me the qualification that 4 if it's not in your report... 5 So I'll ask it -- I'll ask it this way: 6 If you have not referenced any CE programs that 7 Albertsons participated in with Purdue, is it fair 8 to say you don't have an opinion about any 9 Albertsons CE programs? 10 A. If I haven't referenced it in my report, 11 then I haven't opined on it in my report. 12 I always want to reserve the possibility 13 that if I obtain new material, I can have an 14 opinion on that. 15 Q. Okay. If I were to represent to you that 16 Albertsons did not participate in any CE programs 17 with Purdue, would that have any impact on your 18 opinions with respect to Albertsons? 19 A. No. 20 Q. You were asked some questions about red 21 flags, and you've expressed the opinions that the 22 pharmacies did kind of express -- provide 23 information to their pharmacists about red flags 24 too late. 25 My question is: Would you agree with me</p>	<p style="text-align: right;">Page 201</p> <p>1 Q. Okay. There's -- if a pharmacy provided 2 education to its pharmacists about suspicious 3 circumstances surrounding a prescription but 4 didn't call it red flags, do you find any -- do 5 you find any fault by the fact that they haven't 6 labeled it as red flag training? 7 MR. ARBITBLIT: Object to form. 8 Incomplete hypothetical. 9 THE WITNESS: Their lack of the use of the 10 specific term "red flag" is not necessarily an 11 indication that the training was not good. I 12 would really have to examine the specific 13 training. 14 MS. MILLER: That's fair enough. 15 Crossing off questions as I go here, I 16 promise. 17 Okay. I think I'm almost through. Just 18 give me one second. 19 Okay. I think I'm going to wrap up. Can 20 you give me, like, one second just -- 21 MR. ARBITBLIT: Sure. 22 MS. MILLER: Can we take a quick two- 23 minute break? 24 MR. ARBITBLIT: Sure. 25 MS. MILLER: Thank you.</p>

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<p style="text-align: right;">Page 202</p> <p>1 THE VIDEOGRAPHER: We're going off the</p> <p>2 record. The time is 1:48.</p> <p>3 (Recess taken.)</p> <p>4 THE VIDEOGRAPHER: We're back on the</p> <p>5 record. The time is 1:52.</p> <p>6 BY MS. MILLER:</p> <p>7 Q. You were asked some questions earlier</p> <p>8 about adherence programs, and I'm going to turn</p> <p>9 you to page 112 of your report.</p> <p>10 Okay. You -- you were shown a document</p> <p>11 earlier and referenced that Albertsons -- which</p> <p>12 referenced that Albertsons had -- was on a list of</p> <p>13 pharmacies that approved the Purdue Butrans</p> <p>14 adherence program. Do you recall that?</p> <p>15 A. Can you point me to where --</p> <p>16 Q. I don't remember what number it was. Hold</p> <p>17 on.</p> <p>18 So in your report, you are -- I'm</p> <p>19 referencing -- subsection vi on page 112 discusses</p> <p>20 adherence programs, and Albertsons is referenced</p> <p>21 in there.</p> <p>22 The exhibit is -- why am I not seeing this</p> <p>23 exhibit?</p> <p>24 Oh, I think it's Exhibit 13.</p> <p>25 A. Okay. I do have page 112 open, and I do</p>	<p style="text-align: right;">Page 204</p> <p>1 A. Correct.</p> <p>2 Q. With respect to the Adheris program, you</p> <p>3 can see Albertsons is not referenced in the</p> <p>4 Butrans adherence program as listed here in</p> <p>5 Exhibit 32; correct?</p> <p>6 A. That's correct.</p> <p>7 Q. If I were to represent to you that</p> <p>8 Albertsons did not participate in the Butrans</p> <p>9 Adheris DirectAdhere Program, would that impact</p> <p>10 your opinions any way?</p> <p>11 A. No.</p> <p>12 MR. ARBITBLIT: Object to form.</p> <p>13 BY MS. MILLER:</p> <p>14 Q. I'm going to turn you to the second page,</p> <p>15 which is the Pleio GoodStart Program.</p> <p>16 Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. And this one does have a reference</p> <p>19 to Albertsons in it, I will represent to you,</p> <p>20 that -- of participating in the Pleio GoodStart</p> <p>21 Program.</p> <p>22 Do you have any understanding as to what</p> <p>23 that program involved?</p> <p>24 A. Yes.</p> <p>25 Q. What's your understanding?</p>
<p style="text-align: right;">Page 203</p> <p>1 see that section.</p> <p>2 (Whereupon, Lembke Exhibit 32 was marked</p> <p>3 for identification.)</p> <p>4 BY MS. MILLER:</p> <p>5 Q. Okay. I'm going to turn you to</p> <p>6 Exhibit 32, which I've just handed you --</p> <p>7 A. Yes.</p> <p>8 Q. -- at a break.</p> <p>9 Okay. This is referencing a summary of</p> <p>10 the different adherence programs, dated</p> <p>11 April 2014.</p> <p>12 Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. That -- and I'll represent to you</p> <p>15 Exhibit 13, if you can get your hands on it, was a</p> <p>16 document dated January 2014, which it referenced</p> <p>17 the Butrans Adheris program.</p> <p>18 So just going through Exhibit 32, you can</p> <p>19 see -- under the "McKesson Pharmacy Intervention</p> <p>20 Program," you see there is no reference to</p> <p>21 Albertsons in this section; correct?</p> <p>22 A. Correct.</p> <p>23 Q. You're not aware of any evidence to</p> <p>24 suggest that Albertsons participated in the</p> <p>25 McKesson Pharmacy Intervention Program; correct?</p>	<p style="text-align: right;">Page 205</p> <p>1 A. That they would -- that the program would</p> <p>2 send messages to patient consumers delivered by</p> <p>3 email, text, or recorded audio; they would email</p> <p>4 patient brochures; there would be support calls</p> <p>5 from Pleio GoodStart agents with mention of the</p> <p>6 Butrans.com website.</p> <p>7 Q. Do you have any understanding as to which</p> <p>8 patients would have received this information?</p> <p>9 A. Presumably, patients prescribed Butrans.</p> <p>10 Q. So it would be patients who had already</p> <p>11 been prescribed Butrans; correct?</p> <p>12 A. Yes.</p> <p>13 Q. Do you see on the bullet point, the --</p> <p>14 under "Description," the third bullet -- bullet</p> <p>15 point down, it references that there have been a</p> <p>16 total of 331 Butrans patients engaged in this</p> <p>17 program?</p> <p>18 A. Yes, I see that.</p> <p>19 Q. Okay. And do you have any understanding</p> <p>20 as to whether this was limited to a specific</p> <p>21 geographic area, or is this memo discussing</p> <p>22 nationally?</p> <p>23 A. I'm not sure, but it seems like it's a</p> <p>24 national program.</p> <p>25 Q. Are you aware of any information to</p>

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<p style="text-align: right;">Page 206</p> <p>1 suggest that any of these patients who were on 2 this program received prescriptions for Butrans 3 that they otherwise would not have received from 4 their doctors? 5 A. No. 6 MS. MILLER: Okay. I know we have a 7 limitation on time, and I believe I'm right up 8 against that. Just for the record, I do have more 9 questions that I would have otherwise asked today 10 had it not been for this time limitation. 11 MS. KAPKE: I am -- will say the same. 12 And like I noted off the break, I'm going 13 to mark as Exhibit 33 the section of your Track 8 14 report that you were looking at and made some 15 circles on earlier. 16 (Whereupon, Lembke Exhibit 33 was marked 17 for identification.) 18 MR. ARBITBLIT: Are you done? I have two 19 questions. 20 EXAMINATION BY MR. ARBITBLIT: 21 Q. Dr. Lembke -- 22 A. Yes. 23 Q. -- do you plan at trial to give testimony 24 based only on the opinions stated in your reports 25 presented as Exhibit 1 and 2 and the materials</p>	<p style="text-align: right;">Page 208</p> <p>1 2 REPORTER'S CERTIFICATE 3 4 I, EARLY LANGLEY, a Certified Shorthand 5 Reporter, State of California, do hereby certify: 6 That ANNA LEMBKE, M.D., in the foregoing 7 deposition named, was present, and by me sworn as 8 a witness in the above-entitled action at the time 9 and place therein specified; 10 That said deposition was taken before me at 11 said time and place, and was taken down in 12 shorthand by me, a Certified Shorthand Reporter of 13 the State of California, and was thereafter 14 transcribed into typewriting, and that the 15 foregoing transcript constitutes a full, true and 16 correct report of said deposition and of the 17 proceedings that took place; that before 18 completion of the proceedings, review of the 19 transcript was not requested. 20 IN WITNESS WHEREOF, I have hereunder subscribed my 21 hand on May 27, 2024 22  23 EARLY LANGLEY, CSR NO. 3537 24 State of California 25</p>
<p style="text-align: right;">Page 207</p> <p>1 considered originally for those reports? 2 A. Yes. 3 Q. Is it correct to say that you don't intend 4 to offer any opinions or testimony regarding 5 documents on the supplemental materials considered 6 list? 7 A. Yes. 8 MR. ARBITBLIT: Thank you. 9 We're done. 10 THE VIDEOGRAPHER: We are off the record 11 at 1:58 p.m., and this concludes today's testimony 12 given by Dr. Anna Lembke. Total number of media 13 units used was six and will be retained by 14 Veritext. 15 16 (Whereupon, the deposition was 17 concluded at 1:58 p.m.) 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 209</p> <p>1 Veritext Legal Solutions 2 1100 Superior Ave 3 Suite 1820 4 Cleveland, Ohio 44114 5 Phone: 216-523-1313 6 7 May 29, 2024 8 To: DON C. ARBITBLIT 9 10 Case Name: National Prescription Opiate Litigation - Track 8 (Cobb 11 County) v. 12 Veritext Reference Number: 6693057 13 Witness: Anna Lembke, M.D. Deposition Date: 5/16/2024 14 15 Dear Sir/Madam: 16 Enclosed please find a deposition transcript. Please have the witness 17 review the transcript and note any changes or corrections on the 18 included errata sheet, indicating the page, line number, change, and 19 the reason for the change. Have the witness' signature notarized and 20 forward the completed page(s) back to us at the Production address 21 shown 22 above, or email to production-midwest@veritext.com. 23 If the errata is not returned within thirty days of your receipt of 24 this letter, the reading and signing will be deemed waived. 25 26 Sincerely, 27 28 Production Department 29 30 NO NOTARY REQUIRED IN CA</p>

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<p>1 DEPOSITION REVIEW CERTIFICATION OF WITNESS</p> <p>2</p> <p>3 ASSIGNMENT REFERENCE NO: 6693057 CASE NAME: National Prescription Opiate Litigation - Track 8 (Cobb County) v.</p> <p>4 DATE OF DEPOSITION: 5/16/2024 WITNESS' NAME: Anna Lembke, M.D.</p> <p>5 In accordance with the Rules of Civil Procedure, I have read the entire transcript of 6 my testimony or it has been read to me. 7 I have made no changes to the testimony as transcribed by the court reporter.</p> <p>8</p> <p>9 _____ Date Anna Lembke, M.D.</p> <p>10 Sworn to and subscribed before me, a Notary Public in and for the State and County, 11 the referenced witness did personally appear and acknowledge that:</p> <p>12 They have read the transcript; 13 They signed the foregoing Sworn Statement; and 14 Their execution of this Statement is of their free act and deed.</p> <p>15 I have affixed my name and official seal 16 this _____ day of _____, 20____.</p> <p>17 _____ Notary Public</p> <p>18 _____ Commission Expiration Date</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 ERRATA SHEET VERITEXT LEGAL SOLUTIONS MIDWEST</p> <p>2 ASSIGNMENT NO: 6693057</p> <p>3 PAGE/LINE(S) / CHANGE /REASON</p> <p>4 _____</p> <p>5 _____</p> <p>6 _____</p> <p>7 _____</p> <p>8 _____</p> <p>9 _____</p> <p>10 _____</p> <p>11 _____</p> <p>12 _____</p> <p>13 _____</p> <p>14 _____</p> <p>15 _____</p> <p>16 _____</p> <p>17 _____</p> <p>18 _____</p> <p>19 _____</p> <p>20 _____ Date Anna Lembke, M.D.</p> <p>21 SUBSCRIBED AND SWORN TO BEFORE ME THIS _____</p> <p>22 DAY OF _____, 20____.</p> <p>23 _____ Notary Public</p> <p>24 _____</p> <p>25 Commission Expiration Date</p>
<p>Page 211</p> <p>1 DEPOSITION REVIEW CERTIFICATION OF WITNESS</p> <p>2</p> <p>3 ASSIGNMENT REFERENCE NO: 6693057 CASE NAME: National Prescription Opiate Litigation - Track 8 (Cobb County) v.</p> <p>4 DATE OF DEPOSITION: 5/16/2024 WITNESS' NAME: Anna Lembke, M.D.</p> <p>5 In accordance with the Rules of Civil Procedure, I have read the entire transcript of 6 my testimony or it has been read to me. 7 I have listed my changes on the attached Errata Sheet, listing page and line numbers as 8 well as the reason(s) for the change(s). 9 I request that these changes be entered as part of the record of my testimony.</p> <p>10</p> <p>11 I have executed the Errata Sheet, as well as this Certificate, and request and authorize that both be appended to the transcript of my 12 testimony and be incorporated therein.</p> <p>13 _____ Date Anna Lembke, M.D.</p> <p>14</p> <p>15 Sworn to and subscribed before me, a Notary Public in and for the State and County, 16 the referenced witness did personally appear and acknowledge that:</p> <p>17 They have read the transcript; They have listed all of their corrections 18 in the appended Errata Sheet; They signed the foregoing Sworn 19 Statement; and Their execution of this Statement is of 20 their free act and deed.</p> <p>21 I have affixed my name and official seal 22 this _____ day of _____, 20____.</p> <p>23 _____ Notary Public</p> <p>24 _____</p> <p>25 Commission Expiration Date</p>	